



CHANCELLOR OF JUSTICE

2010 OVERVIEW OF THE  
CHANCELLOR OF JUSTICE ACTIVITIES  
FOR THE PREVENTION OF  
ILL-TREATMENT

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STATISTICS OF PROCEEDINGS

Tallinn 2011

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## **PART I**

**CHANCELLOR OF JUSTICE  
AS THE PREVENTIVE MECHANISM**

## I. INTRODUCTION

We can talk about human rights in the modern sense since 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights. Although it is not an ordinary binding international treaty, its provisions have become accepted as customary international law. Prohibition of torture is contained in Article 5 of the Universal Declaration of Human Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The prohibition is considered an absolute human right and a fundamental value in a democratic society, from which no derogations are permissible in a state governed by rule of law (including in crisis situations or in times of war).

In addition to the UN Universal Declaration of Human Rights, the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment (further in the text also called ill-treatment) is also included in other global as well as regional human rights instruments, for example in Article 7 of the UN Covenant on Civil and Political Rights, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Article 4 of the Charter of Fundamental Rights of the European Union, etc. Specific mention could be made of the relevant special topical convention – the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entry into force 26 June 1987), which entered into force in respect of Estonia on 20 November 1991.

Naturally, the prohibition of torture is also enshrined in different national constitutions (e.g. § 18 of the Estonian Constitution under which no one shall be subjected to torture, cruel or degrading treatment or punishment).

Torture is one of the forms of ill-treatment alongside cruel, inhuman or degrading treatment or punishment. Drawing a strict borderline between different forms of ill-treatment has generally not been considered necessary in practice. Distinction depends on the combined effect of many different circumstances – the nature of ill-treatment, its purpose, severity and circumstances of a particular case (e.g. gender, age, health of the victim; existence of aggravating circumstances etc).<sup>1</sup> Under Article 1 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, torture means any act by which severe physical or mental pain or suffering is intentionally inflicted on a person

- to obtain from him or a third person information or a confession;
- to punish him for an act he or a third person has committed or is suspected of having committed;
- to intimidate or coerce him or a third person;
- or for any reason based on discrimination of any kind,

when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Thus, the concept of “torture” consists of three elements: (1) causing physical or mental pain or suffering (an objective element); (2) intentionality and a specific purpose (a subjective element); (3) the perpetrator’s relation to public authority.

As concerns the Penal Code currently in force in Estonia, according to the assessment of international bodies (e.g. the Committee against Torture<sup>2</sup>) the definition of torture in § 122 of the Code does not conform to the above concept. The Ministry of Justice has promised to analyse the need to amend the Penal Code in 2011.<sup>3</sup>

If someone in Europe was asked whether torture or other forms of ill-treatment are permissible, the obvious first reaction would be “No”. In developed countries, ordinary people understand torture or any

1 In more detail about distinctions between different forms of ill-treatment, see the Chancellor of Justice 2008 Overview. Available online: [http://www.oiguskantsler.ee/public/resources/editor/File/Overview\\_2008\(1\).pdf](http://www.oiguskantsler.ee/public/resources/editor/File/Overview_2008(1).pdf). Explanations and other relevant references are also available on the Chancellor of Justice homepage at: <http://www.oiguskantsler.ee/?menuID=316>.

2 Conclusions and recommendations of the Committee against Torture. Estonia. 19.02.2008, CAT/C/EST/CO/4, p 8; Concluding observations of the Human Rights Committee. Estonia. 04.08.2010, CCPR/C/EST/CO/3, p 7. Available online: <http://www.vm.ee/?q=node/10128>.

3 Replies of the Government of Estonia to the list of issues (CCPR/C/EST/Q/3) to be taken up in connection with the consideration of the third periodic report of Estonia (CCPR/C/EST/3). 03.05.2010, CCPR/C/EST/Q/3/Add.1, p 66.

other ill-treatment committed by the authorities as something which happened in the past or which in today's world could occur only in uncivilised societies. Such treatment is associated with something savage – something which civilised, cultural and “intelligent” nations no longer practice. However, when describing a child abduction case from Germany, also analysed by the European Court of Human Rights, where a police officer threatened a criminal with torture in order to save the life of an abducted innocent child,<sup>4</sup> or creating an example of a terrorist captured by the state when it is known that they have information about a planned terrorist act which may result in dozens, if not hundreds, of victims, the answer may be different. At least these examples would make a person reflect longer and doubt before answering.

Additional ambiguity could be caused by the absence of a clear distinction between torture and other forms of ill-treatment. For example, an average person in Estonia may be astonished to hear that Estonia as a country which considers it a democracy based on rule of law has violated Article 3 of the ECHR, which is known as a provision stipulating the prohibition of torture and other forms of ill-treatment. The European Court of Human Rights has twice found Estonia to be in violation of this provision.<sup>5</sup>

Therefore, it is particularly important that countries become aware of the necessity to fight ill-treatment and of the importance of prevention, including through awareness-raising among public authorities. An expression of such efforts on the international level is the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18 December 2002. Estonia signed the Protocol on 21 September 2004 and it entered into force in respect of Estonia on 17 January 2007.

The aim of the Optional Protocol is to organise regular visits by independent international and domestic institutions to places of detention in order to prevent ill-treatment. For this, the document establishes a two-tier system of institutions providing regular visits to places of detention – first, setting up the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)<sup>6</sup> and, second, setting up, designating or maintaining at the domestic level at least one visiting body (national preventive mechanism, NPM) by each State Party.

In Estonia, the Chancellor of Justice performs the functions of the national preventive mechanism since 18 February 2007.

Under the Optional Protocol places of detention mean all places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (Article 4 para 1). The notion of “deprivation of liberty” means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority (Article 4 para 2). In other words, in addition to state custodial institutions, places of detention include all other institutions, regardless of their form of ownership, where the liberty of persons is restricted by order of a public authority or with its consent or acquiescence and from where persons are not permitted to leave at will. Thus, places of detention include not only prisons and police detention centres but also closed wards at psychiatric hospitals, care homes, etc.

However, drawing a line between places of detention and the so-called open institutions is not easy in practice. In the final stage, the distinction may depend on a specific fact – whether persons staying in an institution are deprived of their liberty by locking the doors of wards and/or front doors against their will, committing them to a seclusion room, etc. In the practice of the Chancellor of Justice, such borderline institutions are called “institutions with OPCAT suspicion”. Subdivision V of the overview report, for example, includes the reception centre for asylum seekers and offices of the Police and Border Guard Board which are considered to be institutions with OPCAT suspicion although during the inspection visit it was

4 In more detail, see E. Hilgendorf. Piinamine õigusriigis [Torture in a rule of law]. – *Juridica* 2004, No 10, p 661 ff; W. Gropp. Füüsilise jõu kasutamise õiguslikud alused. Daschneri kaasus ja Saksamaa lennuohutusseadus. [Legal bases for use of physical force. The Daschner case and the German aviation security law] – *Juridica* 2007, No 2, p 75 ff; European Court of Human Rights judgments of 30 June 2008 and 1 June 2010 in case No 22978/05, *Gäfgen v. Germany*.

5 European Court of Human Rights judgment of 8 November 2005 in case No 64812/01, *Alver v. Estonia*; judgment of 2 July 2009 in case No 41653/05, *Kochetkov v. Estonia*. Translations of judgments into Estonian are available online: <http://www.vm.ee/?q=node/9121#sisu>.

6 Its homepage is available at: <http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>.

found that, as a rule (at least at the time of the inspection), they are not places of detention in the meaning of the Optional Protocol. Inspection visits have also been carried out to care homes with OPCAT suspicion and they were found to be open institutions.

There are almost 150 establishments in Estonia qualifying as places of detention within the meaning of the Optional Protocol. The majority of them are police detention facilities and social welfare institutions.

The choice of places of detention to be inspected by the Chancellor of Justice each year is based on the criteria discussed and agreed by the Chancellor's advisers responsible for inspection visits. On the basis of the criteria, an annual work plan is drawn up, laying down the list of establishments to be inspected, the time and type of the visits (i.e. announced or unannounced visits) and whether and which experts will be involved in the visits. Naturally, the plan is drawn up with the consideration that some scope is left for *ad hoc* visits. The choice of specific establishments inspected is explained separately below in the sections dealing with the respective establishments. The choice could depend, for example, on the need to inspect places of detention systematically, i.e. visit each establishment at least once every three years; the level of problems in terms of guaranteeing fundamental rights in a particular establishment (e.g. extremely poor conditions of detention, a vulnerable group of detainees, etc); circumstances having attracted the Chancellor's attention and requiring immediate verification (e.g. information obtained from the media or from petitions to the Chancellor).

In 2010, 27 inspection visits were carried out and 33 places of detention were visited (including two visits to one place – Jõhvi Youth Treatment and Rehabilitation Centre). In comparison, 25 inspection visits to 37 places of detention were carried out in 2009, and 40 inspection visits in 2008 and 18 visits in 2007.

By types of establishments, the inspection visits in 2010 can be categorised as follows:

1. police establishments – 6 visits, 12 places of detention inspected (12 unannounced);
2. Defence Forces – 4 visits, 4 places of detention inspected (4 unannounced);
3. prisons – 1 visit, 1 place of detention inspected (1 unannounced);
4. providers of involuntary emergency psychiatric care and coercive treatment – 7 visits, 7 places of detention inspected (4 unannounced and 3 announced);
5. providers of special welfare services – 3 visits, 3 places of detention inspected (3 unannounced);
6. special schools – 1 visit, 1 place of detention inspected (1 unannounced);
7. providers of rehabilitation service to children with addictions – 2 visits, 2 places of detention inspected (2 unannounced)<sup>7</sup>;
8. expulsion centre – 1 visit, 1 place of detention inspected (1 unannounced);
9. establishments organising reception of asylum seekers – 2 visits, 2 places of detention inspected (2 unannounced).

Experts were used in inspection visits on eight occasions in 2010. The experts included psychiatrists, a child psychiatrist, general practitioners, paediatricians, a patient representative and Rescue Service staff.

Organising of inspection visits is regulated by the “Guidelines for conducting Chancellor of Justice inspection visits”, approved by the Chancellor of Justice order No 1-4/28 of 4 December 2007, which establishes rules and principles for preparing and conducting inspection visits, as well as follow-up proceedings. The guidelines also contain a checklist of items to be observed while touring the inspected establishments. A guideline document “Structure of the summary of an inspection visit” has also been drawn up, containing instructions on the type and presentation of information to be included in a summary of an inspection visit.

During the inspection visits, the Chancellor pays particular attention to communicating with persons in a place of detention. For this, the Chancellor provides an opportunity for reception for all individuals present in the place of detention, as well as persons close to them, and members of the staff. Interviews with detainees as well as staff of the detention facility may also be conducted. Interviewees are selected on a random basis, considering that persons of different ages, cultural backgrounds and gender are represented. The Chancellor and his staff also always talk to people in the place of detention while touring the establishment. In order to establish a better contact and learn to use different interviewing techniques depending on the person who is interviewed (e.g. a minor in a special school, an elderly person in a care home, a foreigner in the expulsion centre, a prisoner in a prison) several training courses for the officials in the Chancellor's office have taken place.

<sup>7</sup> Jõhvi Youth Treatment and Rehabilitation Centre was inspected twice – the second visit was a follow-up inspection.

Different informational material is always taken to the inspected places of detention with the aim to help people whose liberty has been restricted better understand their fundamental rights and freedoms and effectively make use of different complaint mechanisms. The main type of information material distributed at places of detention includes a booklet explaining the competences of the Chancellor of Justice together with a complaint form, a leaflet containing information about state legal aid and a brochure on patient rights.

During the inspection visits, it is also always assessed how the recommendations and proposals made by international organisations (e.g. the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – CPT) have been implemented. In 2010, the Chancellor of Justice informed the CPT about the results of compliance with the recommendations made in its reports addressed to Estonia.

Standards concerning conditions of detention, use of the means of restraint, training, etc. developed by international organisations (both the Council of Europe and United Nations bodies) are an important yardstick in addition to national norms against which the Chancellor of Justice assesses the legality and justification of the relevant regulations and practice. Also the Supreme Court has noted that the Council of Europe “[...] “European prison rules”, although issued as recommendations and thus legally non-binding, should be nevertheless seen as setting goals and principles which should be aimed at and observed as far as possible when interpreting and implementing Estonian legislation. [...] [A] prison is obliged to explain and prove why it is not possible to follow the goals set by the European Prison Rules. In addition, the Chamber notes that it was also pertinent for the appellant in cassation to refer to the CPT standards – although the CPT reports contain only non-binding recommendations (Article 10 para 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment), they add weight to the provisions of the European Prison Rules.”<sup>8</sup>

As a result of the Chancellor’s inspection visits, a summary is compiled, containing recommendations and proposals to the inspected establishment and other relevant authorities. Summaries of inspection visits are also published on the Chancellor of Justice website immediately after sending them to the addressees.<sup>9</sup> Data protection requirements are observed when publishing the summaries (i.e. no personal data is disclosed, etc). A short abstract of a summary of an inspection visit is also translated into English.<sup>10</sup>

In 2010, the Supreme Court acknowledged that the findings contained in the summary reports of the Chancellor of Justice inspection visits may be relied on in administrative court proceedings if no other possibilities for proving the conditions of detention or other circumstances relating to a place of detention exist.<sup>11</sup>

In addition to inspection visits, other activities for preventing ill-treatment have been carried out with the aim to raise awareness of the essence of ill-treatment and the need to fight it among staff and individuals held in the places of detention, as well as among the wider public.

In 2010, the following articles and other writings on problems in places of detention, ill-treatment and/or the respective competence of the Chancellor of Justice were published by advisers to the Chancellor:

- M. Amos. Psühhiaatrilise teenuse pakkumine lastele on ebapiisav. [Provision of psychiatric services to children is insufficient] – *Meditisiiniuudised* 01.06.2010;
- M. Amos. EIK hinnangust psühhiaatria haiglas kinnipidamisest. [On the assessment of the European Court of Human Rights concerning detention in psychiatric hospitals] – *Meditisiiniuudised* 02.06.2010;

8 The Supreme Court Administrative Law Chamber judgment of 7 April 2010, No 3-3-1-5-10, para 19.

9 Summaries of the inspection visits are available online: <http://www.oiguskantsler.ee/?menuID=284>.

10 Available online: <http://www.oiguskantsler.ee/?menuID=331>.

11 The Supreme Court Administrative Law Chamber judgment of 21 April 2010, No 3-3-1-14-10, para 11: “If providing proof of the conditions of detention alleged in a complaint is not possible after reasonable efforts have been taken, or proving the existence or absence of certain conditions is impossible post-factum, the Administrative Law Chamber believes it would be pertinent to rely on the reports of inspection visits to the particular places of detention drawn up within the framework of the above Conventions [i.e. the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; as well as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – explanation added] to assess the credibility of the claims made by the parties to the proceedings.”

- M. Amos. Surm kui kokkuhoid riigile. [Death as saving of resources for the state] – *Postimees* 04.06.2010;
- N. Parrest. Väärkohtlemine on ka tänase Eesti mure. [Ill-treatment is also a problem in today's Estonia] – *Maaleht.ee* 26.06.2010;
- A. Aru. Erikool – kasvatus- või karistusasutus? [Special school – an educational or a penal institution?] – *Märka Last/Spring* 2010;
- R. Sults. Kaitseväelase õigused ja kohustused said selge õigusliku aluse. [Rights and duties of members of the Defence Forces received a clear legal basis] – *Sõdurileht* No 33 (320), 19.07.2010;
- M. Amos. “Vaimuhaiged tuleb kinni nabida!” [Persons of unsound mind must be caught!] – *Eesti Päevaleht.ee* 22.09.2010;
- 03 November. *Postimees.ee*; 04 November. *Postimees* in Russian, interview with the Chancellor of Justice senior adviser Igor Aljošin “Õiguskantsler saab vanadekodudest keskmiselt sada kaebust aastas” [The Chancellor of Justice receives about a hundred petitions a year from retirements homes];
- M. Amos. Õiguskantsler väisas Narva haigla psühhiaatriaosakonda. [The Chancellor of Justice visited psychiatric ward in Narva Hospital] – *Meditšiniuudised* 21.12.2010.

In addition, officials from the Office of the Chancellor organised lectures, training events and information days for staff in places of detention and other relevant persons. For example, on 16 November 2010 N. Parrest delivered a lecture to students of Tallinn University on the nature of ill-treatment and the relevant practice in Estonia. Two larger training projects were also carried out.

The first training project was intended for police officers, more specifically for the officers of the public order bureaus who deal with supervision of persons held in police detention centres, including persons detained for purposes of sobering up. The aim was to introduce the nature of ill-treatment (including relevant international instruments), the competence and practice of the Chancellor of Justice in preventing ill-treatment and, more specifically, some problematic issues in connection with the detention and restraint of persons by the police. The training sessions were held throughout Estonia:

- North Prefecture 16 June 2010;
- West Prefecture 19 October 2010;
- East Prefecture 2 November 2010;
- South Prefecture 14 December 2010.

The second larger training project involved social welfare institutions with the aim to raise awareness of their staff about fundamental rights of persons receiving the service, including about ill-treatment and the necessity and possibilities for its prevention. Training sessions were held in 15 care homes and a total of 237 care home staff who have contact with clients were trained (including activity supervisors, social workers, management). This project is described in more detail in a separate article further in the report.

At the same time, it was also considered important to train officials of the Office of Chancellor of Justice on the prevention of ill-treatment. For this, three training sessions for improving the skills of the Chancellor's advisers were carried out with funding from the European Social Fund:

- First training day 26 March 2010: Interviewing of minors with special psychological needs. Lecturers: Katrin Pruulmann (child psychologist), Sirje Rass (clinical psychologist) and Piret Visnapuu (child psychiatrist);
- Second training day 29 March 2010: *Detention & Diversity: National Preventive Mechanism*. Lecturer: Dr. Jonathan Hadley (*Social Researcher with the University of Helsinki, Former British Police Officer* (1985–2002));
- Third training day 30 March 2010: Means of restraint and initial health examination in closed institutions. Lecturer: Dr. Andres Lehtmets.

With support from the European Social Fund, from 25 to 29 October 2010 a study visit to prisons and their supervisory institutions in the United Kingdom was organised with the aim to obtain an overview of the UK prison system (including private prisons) and their practice of preventing and combating ill-treatment. During the study visit, the Chancellor's advisers acquired useful information and experience concerning general organisation and supervision of prisons which can be adapted to Estonia.

In his activities as the preventive mechanism, the Chancellor of Justice considers international cooperation with other preventive bodies and relevant international organisations to be very important. Advisers to the Chancellor attended various international events on issues of ill-treatment, where they also delivered presentations:

- 27–28 January. M. Amos attended the annual meeting of the heads and contact persons of the NPM in Padua, Italy;
- 24 March. M. Amos delivered a presentation during the working session “*Rights and conditions in mental health facilities – material conditions and staff*” at the 1<sup>st</sup> Thematic NPM Workshop „*The role of NPMs in preventing ill-treatment in psychiatric institutions*“ in Padua, Italy;
- 26 March. M. Amos delivered a presentation „*Establishment of NPM: a first-hand experience*” at the 1<sup>st</sup> Thematic NPM Workshop „*The role of NPMs in preventing ill-treatment in psychiatric institutions*“ during the consultative meeting „*Prospects for the ratification of the OPCAT and the setting-up of an NPM in Italy*“ at the University of Padua;
- 8–11 June. J. Konsa delivered a presentation “*Key challenges that starting NPM faces. Estonian experiences*” at the seminar “*The role of NPMs in preventing ill-treatment in police settings: key rights for those deprived of their liberty by the police*” in Tirana, Albania;
- 23 September. M. Amos delivered a presentation “*The Rapporteur Experience and the Value of Participation*” at the conference “*Pandemic Influenza Preparedness in Europe: Are National Public Health Laws ‘Fit for Purpose?’*” in the European Parliament in Brussels;
- 13–14 October. I. Aljošin delivered a presentation “*Reasons for choosing to do mostly announced visits*” at the 3<sup>rd</sup> Thematic NPM Workshop “*Methodology: Preparation and planning strategies for an NPM Visit*” in Yerevan, Armenia;
- 13–14 October. M. Amos delivered a presentation “*Preparation: Sifting and analysis of the relevant information collected; and consideration of tools needed*” at the 3<sup>rd</sup> Thematic NPM Workshop “*Methodology: Preparation and planning strategies for an NPM Visit*” in Yerevan, Armenia;
- 21–22 October. M. Amos delivered a presentation “*Monitoring the places of detention – task performed by the independent constitutional body*” at the conference “*Public monitoring of places of detention: Experiences from EU Member States*” organised by the European Commission in Ankara, Turkey;
- 17–18 November. M. Amos delivered a presentation „*Main challenges for the protection of the rights of persons with mental health problems in Europe*“ at the international seminar “*The role of National Human Rights Structures in protecting and promoting the rights of persons with mental health problems*” in Bilbao, Spain;
- 3 December. M. Amos attended the annual meeting of the heads and contact persons of the NPM in Strasbourg.

In addition to the above, issues of constitutionality of regulations directly or indirectly concerning the prevention of ill-treatment were analysed in 2010 (e.g. notifying of a child’s legal representative about offence proceedings, providing justifications in a report on placement of a person for sobering up, use of a restraint bed in a police detention centre, conditions of detention at the expulsion centre). Several proceedings carried out by the Chancellor within his ombudsman competence also relate to the prevention of ill-treatment (e.g. a death case in the eastern police department of the North Prefecture, problems of administrative challenge proceedings in prisons, use of special equipment during escort of prisoners), including general conclusions concerning administrative practice developed on the basis of them.

In cooperation with the Ministry of Justice, on five occasions in 2010 advisers to the Chancellor of Justice participated as observers in events (planned or extraordinary searches) carried out in different prisons by the special armed unit of prisons<sup>12</sup>. The aim of the participation was to explore the methodology and practice of the special armed unit and to prevent any possible episodes of ill-treatment in the activities of the unit by the mere presence of observers.

The following subdivision contains an overview of a “special project” in 2010 concerning the training in social welfare institutions. Then the inspection visits made by the Chancellor to different places of detention in 2010 are described, highlighting systematic shortcomings that were detected.

<sup>12</sup> According to the Minister of Justice Regulation No 81 of 12 December 2002 “Procedure for the activities of the armed unit” (§ 1), the main function of the unit is to carry out duties requiring special preparation and relating to the prevention, detection and combating of offences in prisons.

## II. PREVENTION OF ILL-TREATMENT IN SOCIAL WELFARE INSTITUTIONS

### 1. Introduction

An important measure in the prevention of ill-treatment includes raising the awareness among the staff of social welfare institutions as well as among the wider public about the essence of ill-treatment and the need to fight it.

In 2010, the Chancellor of Justice started a training project for social welfare institutions with the aim to raise the awareness of the staff of the institutions about fundamental rights of persons receiving the service (hereinafter also called the clients or persons under care), including about ill-treatment and the necessity and possibilities for its prevention. Although the range of issues covered in connection with fundamental rights during the training is wider than only issues directly relating to ill-treatment, any improvement in the protection of fundamental rights contributes at least indirectly to the prevention of ill-treatment. Thus, for example, the duty of a welfare institution to notify a client and their legal representative about their rights helps, *inter alia*, to ensure awareness of the persons about various legal remedies, including in case of ill-treatment; the right of access to data and the duty to maintain registers allow for supervision over the activities of the institutions, etc.

Within the training project, an adviser to the Chancellor of Justice carried out training sessions in 15 care homes. The sessions took place from March to the end of November 2010. In total, 237 care home staff members who have contact with clients were trained (including activity supervisors, social workers, management). The specific nature of each care home was taken into account and the training sessions covered topics such as sources of fundamental rights (international and domestic), recommendations of international organisations, and opinions of the Chancellor of Justice concerning various issues relating to fundamental rights of persons under care in social welfare institutions. Best practices of protecting the rights of clients were also discussed. Depending on the participants, training sessions were held either in Estonian or Russian.

At the end of each training day, the participants dealt with practical case studies on issues covered and discussed during the training. The participants could also ask questions about fundamental rights of persons receiving the service. Answers to questions were found during a joint debate.

Based on the training sessions, a certain number of questions concerning fundamental rights of persons receiving the service can be highlighted as they were raised in almost every care home. Assuming that the topics could also be of general interest for the staff in other care homes as well as for the public, an overview of ten selected issues and related answers covered during the training is provided below.

### 2. Freedom of movement of clients outside the territory of a social welfare institution

Participants in the training asked whether and to what extent persons receiving a 24-hour special care service may move outside the territory of a care home and whether and to what extent the care home may restrict their freedom of movement.<sup>13</sup> Practical need for restricting the freedom of movement arises allegedly from the aim to ensure the safety of the clients in order to avoid a danger to the client himself or herself or to other persons.

If a person is voluntarily receiving 24-hour special care service or other special welfare service, they naturally have the right to freely move around within the rooms and territory designated for the provision of the service as well as outside, and the service provider may not restrict the freedom of movement of the person. Section 11<sup>51</sup>(1) of the Social Welfare Act establishes certain obligations for providers of 24-hour special care service: the obligation to be aware whether the person receiving 24-hour special care service stays in the premises or on the territory designated for the provision of the service or outside of the premises or territory, and to ensure inspection of entry into and exit from the premises and territory.

<sup>13</sup> This issue is also important with regard to the question what is a “place of detention” and “deprivation of liberty” in the meaning of Art 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Thus, as one of the main duties of the service provider is ensuring safety of persons receiving the service, the provider must be aware whether a person receiving 24-hour special care service is staying in the premises and on the territory designated for the provision of the service or has left. Therefore, a welfare institution should have a system through which a service recipient informs the service provider each time that for a certain period they would be staying outside the territory of the institution. The service provider can and must take note of this information but may not restrict a person's exit and entry from and to the territory. It should also be emphasised that the service provider is responsible for the safety of the person within the provider's premises and territory, and the person himself or herself is responsible for their stay outside.

If a person is placed in a welfare institution by a court ruling (i.e. a person has been deprived of their liberty for a certain period) then certain requirements for the service provider arise under § 11<sup>52</sup> of the Social Welfare Act. The service provider is required to apply stricter security measures in respect of persons placed in a welfare institution by a court ruling as compared to other clients of the 24-hour special care service. The service provider must ensure that a person placed in the social welfare institution by a court ruling does not leave the premises or territory for the provision of the service without being accompanied by a person ensured by the service provider. Additionally, the service provider must ensure 24-hour continuous surveillance and overview of the movement, location and activities of the person and ensure that the person does not endanger himself or herself or others.

Thus, persons referred to the service by a court ruling may leave the premises and territory designated for the provision of the service only when accompanied by a person provided by the service provider. The existence of an accompanying person is necessary to ensure the safety of the client and of others also outside the service provider's territory. The service provider is also required to have a 24-hour overview of the movement, location and activities of the person placed in the institution by a court ruling, in order to ensure their safety. The service provider must monitor the activities of the clients and be able to notice in time and prevent risk situations in order to avoid danger to the person himself or herself or to others.

### **3. Use of means of restraint in a social welfare institution**

Workers of social welfare institutions asked which means of restraint may be used in respect of persons receiving a service in an institution.

The only means of restraint which may be used in respect of persons receiving a service in a social welfare institution is seclusion from other service recipients, i.e. placement of a person in a seclusion room. Seclusion may only be applied in respect of persons receiving (both voluntarily or based on a court ruling) 24-hour special care. Thus, if a person is staying in a social welfare institution receiving any other service than 24-hour special care then no seclusion as a means of restraint may be used even when the person poses a danger to himself or herself or to others. Alternative measures of pacification which do not restrict the fundamental rights of the person should be used in such cases.

Seclusion may only be used if circumstances provided for under § 20<sup>2</sup>(4) of the Social Welfare Act exist, including:

- 1) immediate danger to the life, physical integrity or physical freedom of the person himself or herself or other persons receiving the service;
- 2) verbal appeasing of a person or application of other measures known to the service provider and indicated by the doctor with respect to the specific person has been insufficient;
- 3) to the service provider's knowledge the doctor has not excluded the use of seclusion with respect to the specific person.

If at least one of the requirements under § 20<sup>2</sup>(4) of the Social Welfare Act has not been fulfilled, seclusion may not be used by the service provider and other measures for pacifying the person should be applied.

Seclusion in respect of a person receiving 24-hour special care may only be used if the person poses immediate danger to himself or herself or to others. Before seclusion, always an attempt should be made to pacify the person verbally by talking to them and, if necessary, calling them away from the others. In many cases, seclusion can be avoided through communication or the use of other more lenient measures.

Service provider should be aware whether the doctor has excluded the use of seclusion in respect of a particular person. A specialist doctor or a medical specialist of the rehabilitation team in their letter of referral may have prescribed a specific approach to communicating with the person and recommended measures for pacifying the person. For example, if a person has the habit of scratching their hands and arms during a bout of agitation, gloves could be used to prevent them from injuring themselves, or if a person bangs their head against the wall a protective cap could be used, etc. A medical specialist may recommend other measures to handle specific behaviour of a person and prevent self-injuring. A medical specialist may also exclude the possibility of using seclusion if secluding a person alone in a closed room may have a deteriorating effect on their health (agitation increases, a risk of a heart attack or other health damage arises).

Physical restraint of service recipients, i.e. the use of mechanical means of restraint (straps, handcuffs, special clothing, restraint bed), to restrict the freedom of activity of a person is prohibited and the application of such means of restraint is inadmissible even if a person has caused a serious danger. Obviously, it is also prohibited to restrain persons for purposes of increased convenience of providing the care and guarding them (e.g. at night; a restless client who wishes to walk around, etc).

Means of restraint may not be used as a punishment for behaviour or attitude which the staff find to be inappropriate.

In any case, other pacifying activities, first and foremost verbal pacification, should be preferred to physical restraint as a procedure which most strongly restricts a person's rights and may have a degrading effect.

#### **4. Secluding a client when they pose a danger to the staff of a social welfare institution**

Workers of social welfare institutions were concerned that they are not protected against clients who pose a danger to the life or physical integrity of the staff, as the current legislation does not allow the use of seclusion in such cases.

The health condition of a person receiving the service voluntarily or on the basis of a court ruling may be serious. If due to reasons caused by an illness a person is behaving in a manner which endangers themselves or others, the safety of the person as well as others must be guaranteed. For this, it may be necessary to use seclusion. As was explained above, under § 20<sup>2</sup>(4) of the Social Welfare Act, seclusion in respect of a person receiving 24-hour special care may be used only if:

- 1) there is immediate danger to the life, physical integrity or physical freedom of the person himself or herself or other persons receiving the service;
- 2) verbal appeasing of a person or application of other measures known to the service provider and indicated by the doctor with respect to the specific person has been insufficient;
- 3) to the service provider's knowledge the doctor has not excluded the use of seclusion with respect to the specific person.

This version of the Act entered into force on 13 March 2011. Under the previous version, seclusion of a person could only be used if the person posed an immediate danger to themselves or to other clients, and if other conditions for seclusion (provided for in clauses 2 and 3 of § 20<sup>2</sup>(4) of the Social Welfare Act) are fulfilled. Thus, the law provides for the right of a service provider to seclude a person from other service recipients if an immediate danger to the person himself or herself or to the life, integrity or physical freedom of others exists (§ 20<sup>2</sup>(4) clause 1 of the Social Welfare Act). In other words, since 13 March 2011, it is possible to use seclusion in respect of a person if a danger to other natural persons not mentioned under the previous version of the Act exists, for example a staff of the social welfare institution or a person visiting a client.

Each worker of a social welfare institution should be competent and responsible and have completed training prior to assuming the work duties as well as subsequent regular in-service training. The importance of special training for the staff who are entitled to implement measures of restraint in a social welfare institution should be emphasised. Inter alia, the staff should be trained to restrain agitated or violent clients. Such skills enable the staff to choose the best suitable course of action in complicated situations and significantly reduce the risk of ill-treatment, injury and other damage to the client himself or herself and to the staff.

Once again it should be pointed out that seclusion as a means of restraint may be used only in the most serious cases and on the condition that other measures (e.g. verbal pacification) did not help. In any case, a service provider, when restricting a person's freedom of movement by use of seclusion, should very carefully consider the requirements provided for by the law to ensure that the restriction of the freedom of movement is justified.

## 5. Maintaining a register of the use of seclusion in a social welfare institution

The question concerned mainly non-disclosure of the personal data of clients and the data on the use of seclusion recorded in the seclusion register to other clients of a social welfare institution.

Each provider of 24-hour special care service who has a seclusion room should have created a register for recording the use of seclusion, and a client in respect of whom seclusion was used (and where applicable, also their legal representative) have the right to examine the records made on them in the register, to obtain copies of such records and add explanatory remarks concerning the incident to the register. This requirement arises from the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the visit to Estonia<sup>14</sup> (which took place in 2003), in paragraph 103 of which it is noted: "every instance of the physical restraint of a patient/resident (manual control, use of instruments of physical restraint, seclusion) should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff. This will greatly facilitate both the management of such incidents and the oversight of the extent of their occurrence." The CPT in paragraph 52 of its standards<sup>15</sup> also emphasises the necessity of a register for recording incidents of restraint. According to this, patients should be entitled to attach comments to the register, and should be informed of this right; at their request, they should receive a copy of the full entry.

During the discussions it was found that the practice of maintaining a register for recording incidents of seclusion differs in different social welfare institutions. The register is maintained either electronically in a computer, on paper in a journal or a small booklet. As a client in respect of whom seclusion was used has the right to examine the entries on him or her and add comments to the register, social welfare institutions have faced practical problems how to ensure that a person has access only to information concerning themselves and would not have an opportunity to examine the information on other persons.

Under § 35(1) of the Social Welfare Act, a person has the right to receive information about documents concerning him or her in the possession of a social welfare institution. Under § 6 clause 7 of the Personal Data Protection Act (PDPA), a data subject, i.e. a person whose data are processed, must be given access to the data pertaining to him or her, and the person should also be notified of the data collection. In the meaning of the PDPA, data on the use of seclusion measures are personal data (including sensitive personal data requiring increased protection) to which the person should be given access (§ 19 of the PDPA). Personal data may not be communicated or disclosed to third persons, except in cases clearly provided for by law (§ 14 of the PDPA) – none of the bases established by the law give a client the right to have access to the data of other clients, including data on seclusion. In addition, § 6 clause 6 of the PDPA establishes the principle of security of the processing of personal data: a processor of personal data must apply security measures to protect personal data from involuntary or unauthorised processing, disclosure or destruction.

The current legislation and the CPT documents do not establish requirements with regard to the form of a register for recording incidents of seclusion. Thus, a social welfare institution may maintain a register either electronically or on paper. In view of the above norms, although a person is entitled to examine the data concerning themselves, a social welfare institution must avoid a possibility of access to the data on other clients, including data concerning seclusion. On this basis, it would be recommended to structure the register in a way that each case of seclusion is recorded electronically in a computer or in a paper journal on a separate page. This ensures that a person in respect of whom seclusion was used can have access only to the data concerning themselves.

14 Available online: <http://www.cpt.coe.int/documents/est/2005-06-inf-eng.pdf>.

15 Available online page 52: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>.

In addition, it should be pointed out that a social welfare institution should always notify a person, and whenever possible a person's legal representative, in an understandable manner about the fact that they are entitled to examine the entries on them in the register, as well as receive copies of the records and add comments concerning their seclusion.

## 6. The use of video surveillance in social welfare institutions

The question was concerned with the use of video surveillance in social welfare institutions. Specifically, the participants in the training asked whether video surveillance in a seclusion room may be used.

Under § 26 of the Constitution, everyone has the right to the inviolability of private life. Interference with private life may only take place in the cases and under the procedure established by law. The scope of protection of § 26 extends first and foremost to physical and mental integrity, identity of the person and the right to self-image. Interference with physical and mental integrity may, inter alia, be caused by observation of a person.<sup>16</sup> Fundamental rights and freedoms of natural persons, first and foremost the right to the inviolability of private life, in the processing of personal data are protected by the above-mentioned Personal Data Protection Act. Video surveillance of persons receiving a special care service at the place of the provision of the service may concern sensitive personal data in the meaning of § 4(2) of the PDPA.

Under § 14(3) of the PDPA, surveillance equipment transmitting or recording personal data may be used for the protection of persons or property only if this does not excessively damage the justified interests of the data subject and the collected data is used exclusively for the purpose for which it is collected. In the case of such data processing, the consent of the data subject is substituted by sufficiently clear communication of the fact of the use of the surveillance equipment and of the name and contact details of the processor of the data.

On the basis of the above norm, rooms which are under video surveillance should definitely have clearly displayed information on the fact of the use of surveillance equipment, including the name and contact data of the processor of the data. In addition, information as to which public rooms or areas are specifically monitored should also be clearly displayed.

As concerns the use of video surveillance in a seclusion room, under § 20<sup>2</sup>(2) of the Social Welfare Act, a person must be constantly under the supervision of the provider of 24-hour special care service during the person's stay in a seclusion room. According to paragraph 50 of the CPT standards, clearly, video surveillance cannot replace continuous staff presence in the vicinity of the seclusion room.

Requirements for the furnishings of a seclusion room are established by the Minister of Social Affairs Regulation No 58 of 30 June 2009 "Health protection requirements for special care services and the seclusion room", § 7, subsection 3 of which requires that a seclusion room must have a toilet. If a provider of a special care service decides to use video surveillance in a seclusion room, they should take into consideration the above right to the inviolability of private life (§ 26 of the Constitution). It cannot be considered admissible that the use of a toilet by the person held in seclusion can be monitored through video surveillance. Thus, a toilet pot in a seclusion room must be secluded from the rest of the room (e.g. by a low partition wall) in a way as to guarantee privacy of the person using it, while also ensuring visibility of the person to the staff continuously throughout the person's stay in the seclusion room (requirement arising from § 20<sup>2</sup>(2) of the Social Welfare Act).

On this basis, it may be concluded that a provider of a special care service may use video surveillance in a seclusion room on the condition that information on the fact of the use of the video surveillance and other facts required by the law is clearly displayed at the seclusion room, and the person's right to inviolability of private life is guaranteed. Regardless of the use of video surveillance, a staff member of the service provider must be constantly present in the vicinity of the seclusion room during the person's stay in the room.

<sup>16</sup> U. Lõhmus. Kommentaarid §-le 26. – Kirjastus Juura. Eesti Vabariigi Põhiseadus. Kommenteeritud väljaanne. [Comments on § 26. Constitution of the Republic of Estonia. Commented Edition] Tallinn 2008, § 26 comments 9-9.1.

## 7. The right of clients to have access to the documents concerning themselves

Workers of social welfare institutions asked whether and under which procedure are they entitled to refuse a client access to the documents concerning him or her.

As was explained above, the general Act regulating personal data and access to the data is the Personal Data Protection Act. As a general rule, persons have the right to obtain information on personal data concerning them (§ 19 of the PDPA). Under § 35(1) of the Social Welfare Act, a person has the right to receive information about documents concerning him or her in the possession of a welfare worker or in a social welfare institution. Subsection 2 specifies that a welfare worker may refuse to disclose this information if disclosure is contrary to the interests of the person receiving social welfare.

Thus, as a rule, upon a client's request, a service provider must grant the client access to the documents concerning him or her in the possession of the social welfare institution. These may include first and foremost the client's file. Generally, in accordance with the Minister of Social Affairs Regulation No 4 "List of documents to be collected and maintained by the provider of a special care service", these include a copy of a personal identity document, decision of referral, copy of the rehabilitation plan, activity plan, medical certificate concerning person's health, and reports of seizure of prohibited items and substances (if such items have been seized), as well as other documents or their copies having relevance to the provision of special care service to the person.

A service provider may derogate from the rule only if granting access to the documents could be contrary to the interests of the service recipient.

If access to the documents is restricted, a written and reasoned decision on this must exist and the person should be explained that a complaint or an administrative challenge against the decision may be submitted.<sup>17</sup> In practice, it could be recommended that service providers draw up and introduce a special form for the decision on refusal to grant access to data. In such a case, the person making the decision should just fill in the form and there is no danger that something important is missed. The form should also contain a reference to the possibility of appeal (the procedure and the body of appeal).

However, drawing up a form for refusal of access to the data does not mean that a service provider is relieved from the duty of consideration under § 35(2) of the Social Welfare Act as to whether access to the data should be granted or denied if the disclosure would be contrary to the interests of the person, as well as the duty to provide reasoning based on the specific circumstances of each case.

It should also be pointed out that under the law a service provider may not refuse granting access to the documents only on the basis of a request from third parties – for example, if a person is placed in a social welfare institution at the request of their legal representative and the representative does not wish to disclose this fact to the person under guardianship. A request of a third person may be used as a source of information which is taken into consideration when deciding whether to grant access to the data or not. However, such a request cannot be of decisive importance and exempt the service provider from the duty of consideration.

## 8. Disclosure of personal data of clients in a social welfare institution

During the training it was found that many social welfare institutions have posted signs with the first name and surname of the persons occupying the rooms on the doors of the rooms. The staff asked whether this was permissible. They claimed that the signs were displayed in order to simplify orientation of clients in the institution.

By displaying nameplates on the doors, the institution discloses personal data of the clients in the meaning of the Personal Data Protection Act. In addition to residents of the care home, also other persons visiting the institution can have access to the data, including relatives, friends and acquaintances of other clients.

<sup>17</sup> The decision constitutes an administrative act in the meaning of the Administrative Procedure Act – thus, the decision should comply with all the formal requirements established by the Act (i.e. reasoning, reference to possibility of appeal, etc). See also, e.g. the Supreme Court Administrative Law Chamber judgment of 23 October 2003 No 3-3-1-57-03, para 23.

Under § 5 of the PDPA, processing of personal data is any act performed with personal data, including the collection, recording, organisation, storage, alteration, disclosure, granting access to personal data, consultation and retrieval, use of personal data, communication, cross-usage, combination, closure, erasure or destruction of personal data or several of the aforementioned operations, regardless of the manner in which the operations are carried out or the means used. In addition to the requirement that processing of personal data by an administrative authority must have a legal basis (§ 10(2) of the PDPA), the Act also establishes the principles of purposefulness and minimalism of processing, i.e. a social welfare institution is obliged to process personal data only in conformity with the objective of the processing and to the minimum extent necessary for achieving the objective (§ 6 clauses 2 and 3 of the PDPA).

This means that signs on the doors of the rooms of residents in a social welfare institution should only include data which is unavoidably necessary for achieving the purpose of the processing. The purpose of disclosing personal data of the clients is simplification of orientation for the clients in the institution. However, to achieve this purpose, it is not unavoidably necessary to disclose both the first name and surname of the client. Definitely, it would also be sufficient to disclose only first names and/or initials of the clients. Thus, the practice of disclosing first names and surnames of clients in social welfare institutions is not in conformity with the principles of personal data protection. In order to bring the situation in line with the requirements of the law, it could be recommended that the nameplates on the doors should be designed in the above manner.

## 9. Notifying legal representatives of clients

Workers of social welfare institutions asked in which cases and on which basis a social welfare institution should notify a legal representative of a client.

First, it should be clarified who can be a person's legal representative. A legal representative of a minor is their parent, guardian or rural municipality or city authority having the right of curatorship; a legal representative of an adult person is their guardian or rural municipality or city authority.

The relevant regulation concerning when and what information a social welfare institution should notify to a client's legal representative is established in the Social Welfare Act.

First, under § 11<sup>31</sup>(1) clause 1 of the Social Welfare Act, upon commencement of the provision of special care service, a provider of special care service is required to notify, in addition to the person receiving the service, also the person's legal representative of its rules of procedure and the rights of the person and restrictions during the receipt of the service. Notification takes place orally or in writing and only if the person is able to understand what is said or read. If the person is not able to understand what is being said or read, the legal representative of the person is notified of the rules of procedure of the service provider and the rights of the person and restrictions during the receipt of the service.

Thus, it is assumed that if a service recipient has a legal representative the latter visits the institution upon commencement of the provision of the service to the person under their guardianship.

A social welfare institution must have available exhaustive and clear material for the service recipients, describing the internal rules of the institution, the rights and duties of the service recipients, and indicating the possible appeal mechanisms (available procedures either inside or outside the institution and the possibilities for their use). This document should be made publicly available on the notice-boards in the institution and issued in writing to each service recipient and their legal representative in a language understood by them. This requirement is also noted in the CPT report on the visit to Estonia, paragraph 122 of which states that "an introductory leaflet/brochure setting out the establishment's routine and patients'/residents' rights should be issued to each patient/resident on admission, as well as to their families". On this basis, a service provider is required to issue this information material to each service recipient and their legal representative regardless of whether the persons ask for the information or not.<sup>18</sup>

18 Similarly, e.g. the Supreme Court Administrative Law Chamber in its judgment of 15 February 2005 No 3-3-1-90-04, para 16, decided as follows: "Duties of the administrative authority include not only conducting formally inevitable proceedings for issuing acts but also ensuring that individuals without knowledge of law and unskilled in bureaucratic procedures could productively participate in the proceedings. Counselling and explanation may take place at the request of a person as well as on the initiative of the administrative authority."

It should also be considered good practice that institutions draw up (and issue to clients) information (on the internal rules of the institution, the rights of persons and restrictions applied to them, daily programme, etc) in a simplified form and wording conforming to the person's ability to understand, and as pictograms, to ensure understanding of the relevant information by the service recipients (including, for example, persons with mental retardation or speech impairment).

In addition, a service provider should inform a person's legal representative about all the important events which occur with the person receiving the service in the social welfare institution, for example, placement of the person in a seclusion room. Under § 20<sup>2</sup>(7) of the Social Welfare Act, if the person has a legal representative the service provider shall notify the representative of the seclusion of the person. Notifying a person's legal representative about seclusion is necessary to ensure that the representative is aware of the decisions restricting the person's rights and freedoms. The legal representative can later assess whether the person's rights and interests were sufficiently observed upon seclusion and, if necessary, take measures for protecting the rights of the person. The law does not establish how and when such notification should take place. This may happen both orally (e.g. by telephone) or in writing (e.g. electronically or by letter). In essence the manner of notification is not important. However, it should be stressed that, if necessary, a service provider should be able to prove (e.g. during supervision) that the notification took place. As concerns the time of notification, it should be said that the legal representative should be notified at the first opportunity. It is recommended that the information concerning the fact of notification, its time, manner and the person notified be recorded in writing. This can be done, for example, in the form of a note added to the written report on seclusion, register for recording incidents of seclusion, or in a person's file. Recording the information is necessary, so as to be able to ascertain later whether, how, when and by whom the person's legal representative was notified about seclusion.

Under § 11<sup>31</sup>(1) clauses 7 and 8 of the Social Welfare Act, a service provider must also notify the person and their legal representative about the circumstances concerning the provision of the service: arrival of the date of the termination of the provision of the service, the need for the continuation of the receipt of the service, as well as of a doubt that the service provided to the person does not correspond to the person's needs, and of the intention to terminate the provision of the service prematurely. The aim of the notification is to prevent a situation where the person or their legal representative forgets the date of termination of the service and has not applied for a new referral to the service.

In conclusion, it should be emphasised that a legal representative as a person's guardian has the right and duty to take care of the person and their property and, therefore, the representative should be informed of all the important events in the life of the person during their stay in a social welfare institution. The representative should also have an overview of the services provided to the person under their guardianship. In ensuring this, an important role is played by both the service provider who should fulfil the duty of notification as well as the by the legal representative who should protect the property and personal rights and interests of the person under their guardianship.

## 10. The rights of clients to the inviolability of family life

It was found during the training that many social welfare institutions have clients who wish to live in the same room with their spouse who is also a client. The participants asked whether a social welfare institution is required to grant this request.

Under § 26 of the Constitution, everyone has the right to the inviolability of family life. The scope of protection of family life includes different aspects of family relationships, primarily the right to live together in order to satisfy each other's emotional and social needs.<sup>19</sup> Under § 32(1) of the Social Welfare Act, a person's wishes should be taken into account in the provision of social services. According to the Minister of Social Affairs Regulation No 58 of 30 June 2009 "Health protection requirements for special care services and the seclusion room", § 6(1), up to two persons of the same sex receiving a special care service may live in one bedroom in a social welfare institution, and service recipients of the opposite sex may be placed in the same bedroom only if the persons themselves have expressed a wish for this in writing.

19 U. Lõhmus. Kommentaarid §-le 26. – Kirjastus Juura. Eesti Vabariigi Põhiseadus. Kommenteeritud väljaanne. [Comments on § 26. Constitution of the Republic of Estonia. Commented Edition] Tallinn 2008, § 26 comment 7.

Thus, clients of the opposite sex wishing to live in the same room may submit a relevant written request to the service provider and the latter, taking into account the clients' will, should grant that request if possibility for this exists.

If the service provider cannot grant the wish due to a lack of spare rooms, the clients who wish to live in the same room may submit a written request to the Social Insurance Board for changing the service provider under § 11<sup>28</sup>(1) of the Social Welfare Act. It should also be emphasised that both the service provider and the Social Insurance Board have the duty to provide comprehensive counselling to the clients with regard to the above issues.

### **11. The use of the client's personal mobile phone and computer in a social welfare institution**

During the training, several questions concerning the legality of restricting the use of a client's personal mobile phone and a computer by a social welfare institution were raised. Specifically, workers of the institutions asked whether the institution may restrict the time of the use of a mobile phone by a client in order to avoid the client unnecessarily disturbing their friends and relatives or other persons or institutions by calling. For example, there had been a case where a credit institution contacted a care home with a request that a client's use of the mobile phone should be restricted to avoid them excessively disturbing the bank staff by calling.

First, it should be noted that under § 32(1) of the Constitution the property of every person is inviolable and equally protected. Under paragraph 2 of the same section, everyone has the right to freely possess, use, and dispose of his or her property, while restrictions may only be provided by law. This means that, as a rule, the restrictions may not be established by a legal act lower than a law, such as a regulation of the local government or the Government of the Republic,<sup>20</sup> let alone by internal documents, such as internal rules of a social welfare institution. Also, under Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, every natural or legal person is entitled to the peaceful enjoyment of his possessions. This right may only be restricted in the public interest and subject to the conditions provided for by law.

A legal basis for restricting the right of ownership in social welfare institutions is § 20(1) of the Social Welfare Act, under which a person receiving social services in a social welfare institution may not possess the following substances and objects:

- 1) weapons within the meaning of the Weapons Act;
- 2) explosives, pyrotechnic substances and pyrotechnic articles within the meaning of the Explosive Substances Act;
- 3) substances used for causing narcotic, toxic or alcohol intoxication, and;
- 4) other substances or objects which may constitute a danger to the person receiving the service and the life and health of other people.

Normally, a mobile phone and a computer do not constitute a danger to the life and health of the client and other persons. Thus, as a rule, a care home may not impose restrictions on the use of these items even in isolated cases, let alone establishing general restrictions on their use in internal documents of the institution. The same applies to all the other items not mentioned in § 20(1) of the Social Welfare Act.

On this basis, it may be concluded that each service recipient, regardless of whether they are receiving the service voluntarily or on the basis of a court ruling, has the right to freely possess, use, and dispose of their mobile phone or computer (including for calling) and a social welfare institution may not restrict it against the person's free will.

As concerns clients placed in a social welfare institution by a court ruling, it should be noted that it is extremely important to be aware that restriction of one fundamental right cannot automatically lead to the restriction of another fundamental right. If the court has decided to deprive a person of liberty and place them in a closed institution, this does not mean that the person is automatically deprived of all the other

20 P. Roosma. Kommentaarid §-le 32. – Kirjastus Juura. Eesti Vabariigi Põhiseadus, Kommenteeritud väljaanne. [Comments on § 32. Constitution of the Republic of Estonia. Commented Edition] Tallinn 2008, § 32 comment 5.2.

rights. In essence, placement in a social welfare institution only involves restriction of the person's freedom (which is a fundamental rights under § 20 of the Constitution), while all the other rights, including, for example, the right to the inviolability of property, the right to education, protection of health, the right of expression, etc, are maintained to the full extent. Thus, even a person placed in a social welfare institution by a court ruling has the right to freely possess, use and dispose of their mobile phone or computer.

In a situation where a service recipient in a care home disturbs the peace of other persons, the service provider may (but does not have to), at the request of addressees of the calls, use other measures, for example, explaining, persuading, etc, as the issue concerns relations between a resident of a care home and other persons and is not related to the provision of the care service. It would also be reasonable to notify the person's legal representatives about the situation.

These were the issues most frequently raised during the training sessions.

In 2011, the Chancellor of Justice will continue the training project and will carry out training sessions for the staff who have direct contact with the clients in thirteen care homes.

### III. POLICE DETENTION FACILITIES

#### 1. General outline

In 2010, the police used more than thirty different buildings for detaining individuals.<sup>21</sup> During the reporting year, the Chancellor of Justice visited twelve of them. The inspected facilities included the following:

1. Jõhvi detention chamber of the public order bureau of the East Prefecture (follow-up inspection, previous inspection visit on 13 May 2009);
2. Haapsalu detention chamber of the public order bureau of the West Prefecture (previous inspection visit on 3 October 2008); Inspection visit to Haapsalu and Kärdla detention chambers of the police detention centre under the public order bureau of the West Prefecture, case No 7-7/100823);
3. Kärdla detention chamber of the police detention centre of the public order department of the West Prefecture (previous inspection visit on 29 August 2007); Inspection visit to Kärdla detention chamber of the police detention centre under the public order department of the West Prefecture, case No 7-7/100823);
4. Paide detention chamber of the public order bureau of the West Prefecture (previous inspection visit on 12 June 2008; Inspection visit to the South and West Prefectures of the Police and Border Guard Board, case No 7-7/101221);
5. Viljandi detention chamber of the public order bureau of the South Prefecture (previous inspection visit on 2 November 2007; Inspection visit to the South and West Prefectures of the Police and Border Guard Board, case No 7-7/101221);
6. Karksi constable point under Viljandi police department of the South Prefecture (not previously inspected by the Chancellor of Justice);
7. Suure-Jaani constable point under Viljandi police department of the South Prefecture (not previously inspected by the Chancellor of Justice);
8. Põltsamaa constable point under Jõgeva police department of the South Prefecture (not previously inspected by the Chancellor of Justice);
9. Tõrva constable point of Valga police department of the South Prefecture (not previously inspected by the Chancellor of Justice);
10. Kuressaare detention chamber of the public order bureau of the West Prefecture (previous inspection visit on 3 July 2009; Inspection visit to Kuressaare detention chamber of the public order bureau of the West Prefecture, case No 7-7/101340);
11. Sobering-up facility in the police detention centre under the public order bureau of the North Prefecture (not previously inspected by the Chancellor of Justice; Inspection visit to the sobering-up facility of the North Prefecture, case No 7-7/101628);
12. Police detention centre of the public order bureau of the North Prefecture (previous inspection visit on 30 September 2009; Inspection visit to the police detention centre under the public order bureau of the North Prefecture, case No 7-7/101982).

All the inspection visits were organised without advance notice to the police prefectures or the Police and Border Guard Board. For example, the sobering-up facility in the police detention centre under the public order bureau of the North Prefecture was inspected early on a Saturday morning. The Chancellor involved fire safety experts of the Rescue Service in the inspection of this sobering-up facility as well as of the police detention centre of the public order bureau of the North Prefecture. A medical expert was involved in the inspection of the sobering-up facility as the facility has a medical ward with six beds and in cooperation with the West Tallinn Central Hospital various health services are provided to persons brought for sobering up.

Four of the inspected police facilities were constable points where persons are detained short-term (as a rule, for less than 24 hours). In the remaining police facilities, persons are held for longer periods and the facilities also execute misdemeanour detention and custody pending trial. The exception is the sobering-up facility of the North Prefecture which is only used to detain persons brought for sobering up.

The Chancellor's choice of the police establishments to be inspected was based on the time passed from the previous visit, the seriousness of problems posed by the particular facility in terms of the guarantee of fundamental rights, and also the project for developing standards of short-term detention (four constable points).

<sup>21</sup> In addition to this, there are facilities at the disposal of the border guard department of the Police and Border Guard Board.

Jõhvi detention chamber of the public order bureau of the East Prefecture was visited for purposes of follow-up inspection. The other cases were independent complete inspection visits.

With regard to the inspected establishments, the biggest changes in 2010 were related to the start of the full operation of the sobering-up facility of the North Prefecture and completion of the new Rakvere police department of the East Prefecture.

In general, the recurring problems found during the inspection visits were still related to poor living conditions (e.g. in Haapsalu and Kuressaare detention chambers) which were mostly reflected in serious depreciation of the cells and absence of an exercise yard. In addition to poor living conditions, there were also shortcomings in constable points intended for short-term detention.

In analysing the living conditions and making recommendations, in 2010 the Chancellor again proceeded to a large extent from the country's general economic situation but nevertheless emphasised that, regardless of the shortage of budgetary resources for larger construction and repair projects, at least the renovation of the existing police buildings should continue.

Several inspection visits in 2010 revealed gaps in security in police facilities. The Chancellor made such observations in the detention cells in Haapsalu, Viljandi and Paide and in the sobering-up facility of the North Prefecture. In general, the Chancellor recommended introducing or improving video surveillance and combining it with physical monitoring of the cells by officers.

The Police and Border Guard Board considered improving security important and intends to pay more attention to this in the future. For example, additional security cameras in the so-called public areas were installed in the sobering-up facility of the North Prefecture.

A problem area in 2010 continued to be the provision of health services to detainees. In practice, the organisation of health services varies among the prefectures or even among the police departments within the same prefecture – some police facilities do not have a health care worker at all, while some others employ them as contractual agents or members of staff.

The Chancellor described the issues of health services in the summaries of inspection visits to Haapsalu and Kuressaare detention chambers, the sobering-up facility and the detention facility of the North Prefecture.

Haapsalu and Kuressaare detention chambers did not have a health care worker and the Chancellor proposed to the Police and Border Guard Board to ensure at least the possibility of initial health examination in these police facilities – to find an independent health care worker conforming to international standards. Until then, initial health examination of detainees upon admission should be conducted by officers of the detention facility by interviewing the detainees and taking note and recording of visible injuries or disease symptoms.

The sobering-up facility and the detention centre of the North Prefecture had a health care worker. However, there was a problem with the independence of the worker in connection with ascertaining ill-treatment in the detention centre and in connection with deciding placement of persons in the medical ward in the sobering-up facility.

The Police and Border Guard Board promised to the Chancellor that measures in the area of health care will continue to be taken and, according to the availability of budgetary resources, the situation will be improved.

The fourth problem identified in the majority of the inspected police establishments was related to the long and constant stay of persons detained pending trial in a police detention facility.

Interviews with detainees in detention cells of different police facilities and with police officers, as well as examination of the books of registration of operations in police facilities, revealed that on average persons in custody stayed in police cells for one consecutive month, but in some cases the length of stay was longer.

The Chancellor also referred to this problem in the summaries of inspection visits to the police detention centre of the North Prefecture and the detention chambers in Jõhvi and Kuressaare.

In today's custodial system in Estonia it is inevitable that, instead of a pre-trial detention facility, persons remanded in custody are also temporarily held in police detention centres. It is also obvious that police detention centres are not able to ensure to persons remanded in custody for up to six months (or even longer as a defendant) all the rights prescribed by legislation. The main problem is providing access to health care, exercise in open air, and in some cases also the possibility to continue acquiring education.

In the current situation, the Chancellor of Justice found that the maximum acceptable duration of stay in police facilities by a person remanded in custody is one month. The Chancellor is aware that the stay of persons remanded in custody in police detention facilities is not a problem directly caused by the police, but the difficulty lies in cooperation between the police and prisons, which is often affected by constantly high occupancy rates of pre-trial custody wards of prisons. Due to this, the Chancellor proposed to the Police and Border Guard Board that together with the Ministry of Internal Affairs and the Ministry of Justice they should try to find possibilities to limit the time of stay of persons remanded in custody in police detention centres to one month.

In response to the Chancellor's proposal, the Police and Border Guard Board explained that implementing the proposal depends on the availability of places in prisons. Sometimes a person remanded in custody cannot be transferred from a police detention facility to a prison within one month because, for example, the authority conducting the criminal proceedings has requested that the person should be kept in the police facility. Usually, however, the problem does lie in the high occupancy rates of pre-trial custody wards in prisons.

The inspection visits showed that in comparison to 2009 the situation has improved with regard to introducing to detainees their rights and duties and notifying the persons close to the detainees. In 2009, the Chancellor found shortcomings with regard to these issues during many inspection visits. The situation has definitely improved due to the constant awareness raising activities by the Police and Border Guard Board in police prefectures and drawing up and making available relevant guidance materials and a brief information package on the rights and duties of detainees.

In addition to the above, during the inspection visit to the sobering-up facility and the detention centre of the North Prefecture at the end of the year the Chancellor paid special attention to fire safety by involving experts from the Rescue Service Board. The Chancellor definitely intends to continue this practice in 2011.

It also deserves mentioning that largely on the basis of the results of the inspection visit to the sobering-up facility of the North Prefecture, the Chancellor carried out an analysis of the lawfulness of the use of the restraint bed. The Chancellor ascertained the conditions which should be complied with when using the restraint bed. As restraint beds are also used as a means of restraint in prisons, the Chancellor also sent his opinion to the Minister of Justice.

The following section provides a brief overview of other shortcomings found during each inspection visit but not mentioned above as they cannot be directly considered an overall problem common for all police detention centres.

## **2. Inspection visit to Haapsalu and Kärđla detention chambers of the public order bureau of the West Prefecture**

On 22 April 2010, advisers to the Chancellor of Justice carried out unannounced visits to Haapsalu and Kärđla detention chambers of the public order bureau of the West Prefecture.

In the summary of the inspection visit, the Chancellor dealt with the general issues described above – unsatisfactory living conditions, organisation of supervision and the duration of the stay of detained persons in Haapsalu detention chamber, as well as issues of health care. The examination of personal files of detain-

ees in both Haapsalu and Kärdla detention chambers revealed occasional shortcomings with documenting the fact of notification of persons close to the detainees.

As an example of good practice, the Chancellor pointed out that the book of registration of operations in Haapsalu detention chamber showed that, in addition to other information, the medicines and health services provided to the detainees are recorded (e.g. with regard to detainee Z.I. the book contained a note that on 12 April 2010 he had been taken to the dentist). The book also contained consistent records of the written requests by the detainees for the use of the telephone and registration of incoming and outgoing letters.

### **3. Inspection visit to Paide detention chamber of the public order bureau of the West Prefecture and Viljandi detention chamber of the public order bureau of the South Prefecture**

On 28 June 2010, advisers to the Chancellor of Justice carried out unannounced visits to Paide detention chamber of the West Prefecture and Viljandi detention chamber of the South Prefecture under the jurisdiction of the Police and Border Guard Board.

The inspection of both police facilities revealed the general problem described above in connection with servicing the cells and ensuring security at night when only a specialist officer is present in the detention facility, and assistance is provided by the field officer when necessary. Another problem described by the Chancellor in the summary of the inspection concerns occasional shortcomings with drawing up documents in connection with detainees in Viljandi detention chamber.

As an example of good practice, the Chancellor pointed out in his summary that the book of registration of operations in Viljandi detention chamber also contains records on changing the bedding, use of the shower and the exercise yard by the detainees. Such practice facilitates and simplifies supervision over the execution of detention and provides a quick overview of the daily operations of the detention chamber.

### **4. Inspection visit to Kuressaare detention chamber of the public order bureau of the West Prefecture**

On 22 July 2010, an advisor to the Chancellor of Justice carried out an unannounced visit to Kuressaare detention chamber of the public order department of the West Prefecture under the jurisdiction of the Police and Border Guard Board.

The inspection revealed that the biggest problem was still relating to the living conditions and the duration of stay of detained persons in the detention chamber. Another problem, common for many police facilities in 2010, concerned the provision of health services.

### **5. Inspection visit to the sobering-up facility of the public order bureau of the North Prefecture**

On the early morning (at 06.00) of 9 October 2010, advisers to the Chancellor of Justice carried out an unannounced visit to Tallinn sobering-up facility of the public order bureau of the North Prefecture under the jurisdiction of the Police and Border Guard Board. The Chancellor also involved a general medical practitioner and a rescue service specialist in the inspection visit as experts, whose tasks included respectively the assessment of the provision of health services and inspection of compliance with the fire safety requirements. On 15 October 2010, the Chancellor's advisers had a meeting with the head of the sobering-up facility and head of the police detention centre of the public order bureau of the North Prefecture.

In the summary of the inspection, in addition to the general issues of health care and supervision, the Chancellor also dealt with the use of the restraint bed, fire safety and problems concerning reports on placement of persons for sobering-up.

Leaving aside the recommendations concerning health care and supervision which were already described above, the Chancellor proposed to the Ministry of Internal Affairs to create, by implementing the principles presented in the summary of the inspection visit and in cooperation with health care workers (e.g. in

consultation with the Health Care Board or the Estonian Society of Psychiatrists), sufficient regulation for the use of the restraint bed in police detention facilities: including admissibility of the use of the restraint bed as a special measure, substantive preconditions and procedural regulation. The Chancellor also recommended carrying out relevant training for the officers.

In addition, the Chancellor proposed to the Police and Border Guard Board to stop immediately the use of the restraint bed (without special fixation straps and without constant supervision by a health care worker) in the antechamber (waiting room) of the sobering-up facility.

As a fire safety expert from the Rescue Service Board was involved in the inspection visit, the Chancellor proposed to the Police and Border Guard Board to take into consideration the opinions expressed in the expert report and demand that the owner of the building should improve fire safety in it. Examination of the documents concerning persons brought for sobering up revealed that reports of placement of a person for sobering up did not always indicate the reason for the placement, and therefore the Chancellor proposed to the Ministry of Internal Affairs to amend the form of the report on placement for sobering up, so as to include an indication of specific reasons why a particular person was placed in a sobering-up cell.

As an example of good practice, the Chancellor pointed out that an officer is required always to make a record of the inspection of the cells after an inspection round. Such a requirement helps to ensure that the cells are actually inspected in practice.

## **6. Inspection visit to the detention centre of the public order department of the North Prefecture**

On 10 November 2010, advisers to the Chancellor of Justice carried out an unannounced visit to the police detention centre of the public order bureau of the North Prefecture under the jurisdiction of the Police and Border Guard Board. The Chancellor also involved rescue service officers as experts in the visit, whose tasks included inspection of compliance with fire safety requirements in the detention centre.

Among issues already described above, problems with the duration of stay of persons remanded in custody and with the provision of health services were found.

Problems specific to this police facility included the use of two isolation cells in the detention centre, which was not properly recorded by the police officers, and compliance with fire safety requirements.

In connection with the documentation of the use of isolation cells, the Chancellor proposed to the Police and Border Guard Board that the use of the two isolation cells should be recorded in a way as to indicate the precise time of the beginning and end of each placement in the isolation cell, the data of the officer deciding the placement, the reasons for the placement, and the times when the person staying in the isolation cell was inspected along with the summary of the inspection.

With regard to fire safety in the detention centre of the North Prefecture, experts drew up an opinion and the Chancellor proposed to the Police and Border Guard Board to take the expert opinion into consideration and, in cooperation with the State Real Estate Company (the owner of the building), improve fire safety in the building.

The Police and Border Guard Board agreed with the Chancellor's proposals and noted in its reply that the detention centre had introduced documenting the placement in the isolation cells. In case of a person's placement in the isolation cell, the officer of the detention centre will fill out a checklist in respect of each detainee, including information on the time and date of beginning and end of the placement, the data of the officer making the decision, and reasons for the placement in the isolation cell.

The Police and Border Guard Board also affirmed that the detention centre was planning to organise a training session for the staff on action in case of extraordinary events (including fire) and currently the North Prefecture is also preparing guidance material for the staff of the detention centre on action in case of extraordinary events. The detention centre would also take into account the opinions of the fire safety expert in organising its work and, in cooperation with the owner of the building (the State Real Estate Company) the situation of fire safety will be improved.

#### IV. EXPULSION CENTRE

On 22 November 2010, advisers to the Chancellor of Justice carried out an unannounced follow-up inspection visit to the expulsion centre of the migration supervision bureau of the Citizenship and Migration Department under the Police and Border Guard Board (PBGB) (until 31 December 2009, the expulsion centre of the Citizenship and Migration Board ([Inspection visit to the expulsion centre of the migration supervision bureau of the Citizenship and Migration Department under the Police and Border Guard Board, case No 7-7/101685](#))). The Chancellor's previous visits to the expulsion centre took place on 6 May 2009 and 30 September 2009. An expert was involved in the inspection visit to assess the availability of general medical care.

Primary attention during the visit was on compliance with the Chancellor's recommendations made on 29 June 2009 and 10 November 2009. Additionally, attention was also paid to other issues arising during the visit and to compliance with the recommendations given by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2007.

The most important change in the organisation of work of the institution concerns the fact that since 1 October 2010 security service in the expulsion centre is offered by the guard bureau of the Public Order Department of the PBGB instead of the private company G4S which had been used previously. Due to the merger of different institutions and establishment of the joint Police and Border Guard Board on 1 January 2010, the job descriptions of the officials of the expulsion centre were still being revised during the visit. Guidelines for the provision of security service had also not yet been revised due to the transfer of the duties from the private security company to the guard bureau of the Public Order Department of the PBGB.

The inspection visit revealed that the majority of problems were related to compliance with the recommendations concerning the application of security measures and drawing up administrative acts. There were still problems with the decisions concerning the use of handcuffs, translation of administrative acts restricting the rights of persons, provision of opportunities for spending free time for the persons to be expelled, and enabling visits and other communication with persons outside the centre. It could also be noted that some confusion in ascertaining the job-related duties of the staff was caused by the delay in the revision of job descriptions and security guidelines since the establishment of the joint PBGB. The Chancellor also carried out an assessment of the organisation of health services and ensuring an opportunity to comply with the compulsory school attendance for persons detained in the centre.

As a result of the inspection visit, on 27 December 2010 the Chancellor issued recommendations to the Director General of the PBGB for compliance with the principles of lawfulness and good administration. The Chancellor also issued recommendations to the Minister of Internal Affairs concerning conformity of the Obligation to Leave and Prohibition on Entry Act and the Minister of Internal Affairs Regulation of 27 July 2004 establishing the "Internal rules of the expulsion centre" with the Constitution and the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. The recommendations concerned justification of the conditions of detention in the expulsion centre. The following section contains an overview of the Chancellor's recommendations.

(1) First, the Chancellor assessed the provision of health services to the detainees in the expulsion centre. An expert was involved in the visit to assess the conformity of health services with the requirements.

First of all, the Chancellor assessed the general availability of health services in the expulsion centre and conformity of the relevant legislation with the Constitution.

Under § 26<sup>9</sup>(1) of the Obligation to Leave and Prohibition on Entry Act, emergency medical care must be ensured for persons to be expelled. Under subsection 2, the expulsion centre must have a permanent medical treatment facility for the supervision of the health of persons to be expelled. Under Article 16 paragraph 3, second sentence, of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, emergency health care and essential treatment of illness shall be provided during detention.

The inspection revealed that persons detained in the expulsion centre are generally ensured access to both general and specialised medical care regardless of the low standard of health care established under the Obligation to Leave and Prohibition on Entry Act. As a result of the inspection, the Chancellor reached the conclusion that the standard of health care to be ensured for persons to be expelled under § 26<sup>o</sup>(1) of the Obligation to Leave and Prohibition on Entry Act is not in conformity with § 28(1) of the Constitution or the above Directive.

On this basis, the Chancellor recognised the practice of the expulsion centre to ensure both general and specialised medical care for the detainees.

The Chancellor of Justice recommended to the Minister of Internal Affairs to analyse the regulative framework of the provision of health care to persons to be expelled under the Obligation to Leave and Prohibition on Entry Act and initiate amendment of § 26<sup>o</sup>(1) of the Act in order to bring it in line with the Constitution and the Directive.

Secondly, the Chancellor dealt with the issue of guaranteeing the independence of health care providers, their awareness of the particularities of the provision of the service in the expulsion centre and of the persons detained in the centre.

Health services at the centre are provided by a general practitioner and medical nurses on the basis of a contract. The general practitioner has provided the service at the centre since its establishment. The provider of the nursing care service was chosen through a public tender for a period from 1 January 2010 to 31 December 2010. According to the contracts, the service providers must comply with the Health Care Services Organisation Act and the conditions established in relevant other legislation, but the contracts did not include the principle of independence of the health service provider. In addition, the contract for the provision of nursing care services explicitly states that the contracting entity may provide guidance and orders to the service provider concerning the provision of the service and the service provider must comply with them. The contract also fails to define principles having relevance in terms of prevention and detection of ill-treatment within the provision of health services. Moreover, the medical nurse noted that after the conclusion of the contract the expulsion centre did not explain to them the particularities of the centre and the persons detained there.

On this basis, the Chancellor made the following recommendations to the Director General of the PBGB: (1) establish the principle of independence of the service provider in the contracts for the provision of health services; (2) define in the contracts for the provision of health services the duties of service providers in connection with the prevention and detection of ill-treatment in addition to duties concerning medical treatment; (3) when entering into a contract with a new service provider, ensure that they are informed about the particularities of the centre and the persons detained there; (4) define, either in the contract or in internal guidelines, clear procedures as to when, how and whom the medical staff are required to notify about possible cases of ill-treatment; (5) make available to the service provider the recommendations of the Chancellor of Justice concerning the provision of health services and the role of medical staff in preventing and detecting ill-treatment.

The Director General of the PBGB replied that the contracts for the provision of services in the expulsion centre would be amended, so as to establish the independence of the service provider from the contracting entity and ensure that the service provider proceeds from the requirement of providing effective medical treatment to the detainees in the centre. The contract will also include the requirement for the service provider to have undergone training on the principles of documenting and reporting any cases of torture and other forms of ill-treatment. It will be established in the contract that in case of detection of ill-treatment the provider of health services should notify in writing the head of the internal audit bureau of the PBGB and the head of the migration supervision bureau of the Citizenship and Migration Department of the PBGB.

Thirdly, it was verified whether the detainees in the expulsion centre have access to dental care in case the persons themselves have no funds to pay for the care. The medical staff of the centre explained that if a person does not have any financial resources, only tooth extraction is provided free of charge.

The Chancellor recommended to the Director General of the PBGB to ensure preservative dental care for detainees in the expulsion centre.

The PBGB replied that it would make a proposal to the Ministry of Internal Affairs to amend § 26<sup>9</sup>(1) of the Obligation to Leave and Prohibition on Entry Act.

Fourthly, it was assessed how the confidentiality is ensured when detainees are referred to a health service provider outside the expulsion centre.

The inspection revealed that in case of provision of health services outside the expulsion centre the practice concerning the presence of the escort team varied. On some occasions, although not always, a member of the escort team was present during the provision of the health service. Medical staff have either requested the presence of the escort team or asked them to wait outside. Neither the authorisations issued to detainees for stay outside the expulsion centre nor the escort plan contained a note whether the escort team was present during the provision of the health service.

The Chancellor made the following recommendations to the Director General of the PBGB: (1) ensure that police officers are outside the hearing distance during the provision of health services and, unless the medical staff explicitly request otherwise, also outside the range of vision; (2) record on the escort plan attached to the authorisation for stay outside the expulsion centre whether a member of the escort team was present during the provision of the service, where he or she was located and whether it was at the request of the doctor, including the relevant affirmation by the doctor; (3) if an authorisation for the use of restraining measures was given, record whether handcuffs were used during the provision of the health service; (4) specify the PBGB guidelines for escorting detainees with regard to the principles for the use of special equipment and presence of the escort team during the provision of health services.

The PBGB replied that the presence of police officers during escort outside the centre is organised in accordance with the escort plan, a reasoned decision and risk analysis. The use of handcuffs during escort is recorded on the escort plan. Officials of the expulsion centre will be offered training on how to properly draw up the relevant documents.

Fifthly, the issue of interpretation during the provision of the health service arose during the inspection.

The PBGB in reply to the Chancellor's request for information explained that if a person detained in the expulsion centre speaks a language which the health care professional of the centre does not understand, and if the resident consents, the help of other residents of the centre is used for interpreting. On several occasions, consular officials acted as interpreters. The PBGB noted that generally the staff of the service provider participated as interpreters during the provision of health services outside the centre.

The Chancellor recommended to the Director General of the PBGB to consider possibilities for involving, as a rule, a professional interpreter at the expense of the PBGB in case of provision of health services if the service provider does not speak the language of the detainee and if the person does not have resources to pay for the interpreter. This should be kept in mind when providing health services both inside and outside the centre (in particular in case of psychological and psychiatric counselling).

The PBGB replied that, if necessary, a contractual interpreter at the expense of the PBGB is involved if the service provider does not speak the language of the detainee and the person has no resources to pay for the interpreter. If necessary, and with the consent of the person concerned, the assistance of embassies is used for interpreting.

Sixthly, the practice of recording the data of the initial medical examination was verified.

The inspection revealed that if the initial medical examination is performed by a nurse, the relevant data are recorded on a removable sticker which did not contain the name of the patient, the name of the nurse performing the examination, or the date of the examination. In addition, in case of persons detained for up to 48 hours, no medical file was opened although, allegedly, they undergo initial medical examination.

The Chancellor made the following recommendations to the Director General of the PBGB: (1) ensure that the results of the initial health examination performed by a nurse are recorded in a manner as to indicate the date of the examination and enable permanent inclusion of the data in the medical file; (2) document the results of the health examination of persons detained for up to 48 hours.

The PBGB replied that the providers of the nursing services were notified about the requirement to record the results of the initial health examination in the medical file of the person to be expelled. The medical staff of the centre record the results of health examination of persons detained for up to 48 hours in the nurses' daybook.

The seventh issue arising during the inspection concerned the fact that if a person was detained elsewhere (in particular in a prison) prior to transfer to the expulsion centre, no transcript of their medical file (including previous tests for diagnosing infectious diseases or other significant health data) were transferred together with the person.

The Chancellor recommended to the Director General of the PBGB to analyse the situation and, in cooperation with other relevant institutions (prisons, providers of health services to residents of Illuka Reception Centre for Asylum Seekers), find a solution, so that persons transferred to the expulsion centre from these institutions are given a copy of their medical file or other significant relevant documents, or that such data is transferred directly to the doctor of the expulsion centre.

The PBGB replied that the contract for the provision of general practitioner services will include the obligation to request transcripts of the medical records of the person from the institution where they were staying previously.

The eighth issue that arose concerned the confidentiality of health data after a person's departure from the expulsion centre.

The Chancellor recommended to the Director General of the PBGB to ensure that a person's medical file is attached to the personal file in a manner that guarantees the confidentiality of the relevant data (e.g. in an envelope sealed by the doctor).

The PBGB replied that in the future the medical file of the person to be expelled is archived separately in a sealed envelope as part of the personal file and a restriction on access to the file will be imposed, so that access to a medical file in a sealed envelope is only granted upon request with consent of the head of the migration supervision bureau of the Citizenship and Migration Department of the PBGB.

Ninth, maintenance of records of medicines dispensed to persons detained in the expulsion centre was verified.

The Chancellor recommended to the Director General of the PBGB to ensure maintenance of records also in case of over-the-counter medicines. For this, it is necessary to analyse whether administration of the relevant medicines should always be recorded in the so-called nurses' daybook, and keep records of the quantity of the medicines; as well as verify that the relevant medicines are administered in the presence of an official or a member of the security team.

The PBGB replied that medical nurses and the general practitioner of the centre introduced a card for the dispensing of over-the-counter medicines, including information on the name, time and quantity of the medicine dispensed by the officials of the centre. The card is maintained separately for each detainee. As a rule, medicines are administered by a person in the presence of an official.

The tenth issue that arose concerned availability of first aid equipment and the provision of first aid in the centre.

The issue of availability of first aid equipment arose prior to the inspection visit in connection with a death case in the centre. Access to the equipment needed for the provision of first aid was delayed because the equipment had to be brought from the medical office in the administrative wing of the building and the

office was locked. The inspection revealed that two officials of the centre had been trained to provide first aid. However, the staff rosters do not ensure constant presence of an official with first aid training.

The Chancellor made the following recommendations to the Director General of the PBGB: (1) assess the location of first aid equipment in the centre and ensure that the equipment is quickly available in case of an incident occurring in the accommodation section; (2) organise first aid training for more officials, so as to ensure constant presence of an official with first aid training in the centre.

The PBGB replied that first aid equipment and the equipment for artificial respiration is available in all the accommodation sections. First aid training for officials will be organised at the first opportunity.

(2) The second range of issues verified during the inspection concerned compliance with the Chancellor's recommendations of 29 June 2009 and 10 November 2009 with regard to the application of security measures and documenting of the relevant cases.

First, the Chancellor dealt with the issue of establishing a register for security measures. In 2009, the Chancellor recommended that the centre should establish a general register for recording cases of application of security measures, including all the incidents of the application of the security measures, the type of the measure applied, the justification for its use, the period of application, notes concerning consultation with a doctor and occurrence of any damage to the health.

The PBGB explained that information on the period and circumstances of application of security measures is included in the PBGB information system, but this does not include a possibility to make detailed statistical queries on the use of the measures. Examination of the database during the inspection visit revealed that the information system only enabled searching information on the application of security measures separately in respect of each particular person. The information system does not enable aggregate searches on security measures applied during a certain period (including the overall number and types of security measures applied) or on the above-mentioned data which must be recorded in the register of security measures.

Due to the failure to obtain the relevant aggregate statement during the inspection, it was not possible to have a overview of all the instances of application of security measures during the inspected period, and therefore it was also not possible to obtain an exhaustive overview of whether other recommendations of the Chancellor in connection with the general principles of the application of security measures (purposefulness of the measure, principle of proportionality, duty of reasoning) and guarantees for the prevention and detection of ill-treatment had been complied with.

On this basis, the Chancellor repeated his recommendation to the Director General of the PBGB to ensure that all instances of the application of security measures are recorded in an aggregate manner, including the type of a measure, duration and reason of its application, the exact beginning and end of the application, information concerning consultation with a doctor and occurrence of any damage to health.

The PBGB replied that aggregate registration of the application of security measures (with a possibility of making aggregate queries in the information system) was not possible due to the lack of resources. Information on the period and circumstances of the use of security measures is recorded in the database on aliens staying or having stayed in Estonia without a legal basis. All the decisions on the application of security measures are preserved in the personal file of each person subject to expulsion, and access to the data can be obtained.

Secondly, the Chancellor verified the practice of the expulsion centre in connection with the placement of persons in a separate locked room as a security measure for purposes of health monitoring upon admission to the centre, as well as compliance with the duty of reasoning of the application of security measures.

In 2009, the Chancellor recommended that, due to the absence of a relevant legal basis, the practice of application of security measures whereby all the persons admitted to the centre are placed in a separate locked room as a security measure, regardless of the existence of a reason to suspect the presence of an infectious disease that could pose a risk by spreading through ordinary contact with other persons.

The examination of personal files during the inspection visit revealed that in the majority of the cases no decision on the use of a security measure for purposes of assessment of an individual's health had been drawn up. On several occasions, the reason given for the use of a security measures for purposes of health assessment was a mere statement that no information about the person's health existed or it was necessary to avoid the risk of infection of other residents of the centre, without providing any factual reasoning. Thus, in certain cases, a person had been placed in a separate locked room for purposes of health assessment merely on the basis of a decision for the application of a security measure. In addition, the duty of reasoning to which the Chancellor had repeatedly drawn attention during his previous inspection visits had not been complied with.

The Chancellor repeated his recommendation to the Director General of the PBGB to comply with the duty of reasoning in the decisions for the application of a security measure and to record all the circumstances on the basis of which a decision is made.

The PBGB replied that it would take into consideration the recommendation to comply with the duty of reasoning in decisions for the application of security measures and record in the decision all the circumstances on the basis of which a security measure is applied.

Third, the Chancellor verified compliance with his recommendations made in 2009 in connection with medical supervision of the application of security measures (including restraining measures) and documenting of such supervision.

The inspection revealed that job descriptions of officials of the centre were being revised in connection with the establishment of the new joint PBGB and job descriptions of security service staff had not yet been approved. Thus, the duty of supervision was not clearly established in internal documents of the institution. Also, decisions on the use of security measures were not registered in an aggregated manner, including data concerning consultation with a doctor. On this basis, it was not possible during the inspection to verify exhaustively the implementation of the relevant recommendations in practice.

In view of the reply by the PBGB and the explanations given by the representatives of the centre during the inspection, the Chancellor pointed out that according to the current organisation of work immediate performance of a medical examination was not ensured in case of application of security measures, and notification took place only on the following day. Consultation with a psychologist or psychiatrist only took place at the request of the person.

On this basis, the Chancellor repeated his recommendation to the Director General of the PBGB to present a detailed plan for implementing the recommendations and establish explicitly in internal guidelines or job descriptions the relevant duties concerning the involvement of medical staff. The Chancellor also repeated his recommendation to supplement the form of a decision for the application of security measures, so as to indicate on the form whether and when a medical staff of the centre and a psychiatrist examined a person, assessed his or her condition, or when consultation by telephone took place.

The PBGB replied that order No 75 of 1 January 2010 of the Director General of the PBGB "Approval of the forms and the procedure for filling out the forms used in the expulsion centre of the migration supervision bureau of the Citizenship and Migration Department of the Police and Border Guard Board" would be amended, so that in case of consultation with medical staff upon the application of security measures the decision on the use of security measures would contain a report on a separate page, indicating whether and when a health service provider of the centre has examined the person, assessed their situation or when consultation by telephone took place and what was the result of the consultation.

Fourthly, compliance with the Chancellor's recommendations made in 2009 in connection with the duty of monitoring of a person in case of application of restraining measures was verified during the inspection.

Based on a random examination of personal files during the inspection no cases were found where a restraining measure in the form of placement in a separate locked room was used in respect of a person. In reply to the Chancellor's request for information, the PBGB explained that in case of use of restraining measures the centre would ensure direct and constant monitoring of a person and verification of their

condition at 5 to 10 minute intervals. Representatives of the PBGB noted that the duty of monitoring rests with security officials. As was mentioned above, guidelines for officials of the guard bureau of the public order department of the PBGB had not yet been established.

The Chancellor repeated his recommendation to the Director General of the PBGB to ensure constant direct monitoring of a person in case of application of restraining measures and verify the person's condition at least at 5-minute intervals, while also taking into account the situation of a specific person which may require uninterrupted monitoring. For this, the following should be defined clearly in internal documents of the institution: (1) whose task the monitoring of a restrained person is; (2) how the avoidance of a possible conflict of interest is ensured; (3) time intervals of monitoring, so as to ensure a sufficient frequency of monitoring depending on the condition of a person. The Chancellor pointed out that in order to ensure verifiability of compliance with these recommendations the circumstances of monitoring should be established in writing (e.g. included in a decision for the application of security measures or in an appendix to it).

The PBGB replied that simultaneous use of restraining measures in respect of a person who has been placed in a separate locked room was an extremely exceptional occasion which normally does not happen. Usually, the application of restraining measures is terminated in case of placement in a separate locked room. If a person is dangerous to themselves, restraining measures may be used but in that case constant direct monitoring of a person at maximum 5-minute intervals is ensured. Circumstances concerning monitoring of a person are recorded in the form or a report on a separate sheet which is attached to the personal file as an appendix to the decision for the application of security measures.

(3) The third range of issues assessed during the inspection concerned the use of handcuffs during escort of persons outside the centre and verification of whether recording of the relevant circumstances was in conformity with the law.

The inspection visit of 6 May 2009 revealed that handcuffs had been used in case of escorting of persons outside the centre although the use of handcuffs was not indicated on the authorisation for stay outside the centre. On this basis, the Chancellor recommended that a decision for the use of handcuffs in case of a person's stay outside the centre should be made in accordance with the requirements of competence, form and substantive legality. During the follow-up inspection on 30 September 2009, it could be seen from personal files that in case of the use of handcuffs the authorisation for stay outside the centre and the escort plan included a reference to a legal basis and a general justification (e.g. "behaviour could be unpredictable"). Thus, an assessment of a person's behaviour was not related to factual circumstances which are taken into account in case of a risk assessment. On this basis, on 10 November 2009 the Chancellor made an additional recommendation to ensure compliance with the duty of reasoning in case of use of handcuffs, so as to indicate factual reasons for the use of handcuffs.

The inspection of authorisations for stay outside the expulsion centre and the escort plans revealed that the reasons for the use of handcuffs were presented mostly very generally. In some cases only a reference to the legal basis was given as reasoning. Thus, on some occasions the justifications were not linked to the assessment of the risk of escape (e.g. a justification that a person's behaviour had been arrogant) or objective circumstances characterising a person (e.g. an assessment that a person's behaviour may be unpredictable). In some cases the justifications were irrelevant (e.g. a person's background unknown, although the person had been in the centre for almost four months). In some cases, one element characterising a person had been given decisive importance (e.g. a person had a previous conviction). Therefore, on the basis of the reasoning given in the administrative acts it was not possible to prove or verify retroactively whether any assessment had taken place. Thus, the use of handcuffs in most cases was not based on aggregate assessment of different circumstances which, in turn, casts doubt on the lawfulness of the use of handcuffs.

On this basis, the Chancellor recommended to ensure compliance with the principle of discretion and the duty of reasoning when deciding the use of handcuffs in case of a person's stay outside the centre. The Chancellor also recommended the Director General of the PBGB to analyse the conformity of the definition of special equipment in the guidelines for escorting detained persons with the definitions provided under the Obligation to Leave and Prohibition on Entry Act.

The PBGB replied that it would ensure that the decisions on the use of handcuffs in respect of persons during the stay outside the centre would be made in compliance with the principle of discretion and duty of reasoning. A training course for the officials of the centre on how to draw up documents properly would be organised.

(4) Fourth, the inspection visit revealed that the files of persons subject to expulsion did not contain a record of the use of restraining measures or special equipment during the execution of the expulsion.

The Chancellor recommended to the Director General of the PBGB to amend the guidelines for escorting detained persons by establishing the requirement for drawing up an escort plan also in case of cross-border escort and to ensure that the use of special equipment, the duration of their use and other details of the escort are recorded in the escort plan, in order to ensure better verification of the use of special equipment.

The PBGB replied that in case of cross-border escort, special equipment is normally not used. If any special equipment is used, the use is recorded in the form of a report.

(5) Fifth, the Chancellor dealt with the issue of prohibited items in the expulsion centre. More specifically, the inspection revealed that persons detained in the centre were deprived of religious paraphernalia made of precious metals. Examination of personal files also showed that a marriage ring had been taken from a person but was later returned upon request.

Under § 26<sup>21</sup> (2) clause 4 of the Obligation to Leave and Prohibition on Entry Act, internal rules of an expulsion centre shall provide for the list of personal effects which persons to be expelled may hold in the expulsion centre. § 31(1) of the internal rules states that persons detained in the expulsion centre are prohibited to possess items which are not explicitly allowed by the internal rules. According to § 32(1) of the internal rules, persons detained in the expulsion centre are allowed to possess a reasonable quantity of personal clothes, footwear and hygiene articles, tobacco products carrying a tax seal, books, magazines and newspapers, stationery and documents which are not subject to being deposited.

Thus, restrictions on the personal effects of detainees in the centre were established by internal rules, containing an exhaustive list of items which persons are allowed to possess.

The Chancellor explained that under § 32(2) of the Constitution everyone has the right to freely possess, use, and dispose of his or her property; restrictions shall be provided by law. Thus, the restrictions on the possession, use and disposal of property must be established by an Act. The restrictions must also be in conformity with the Constitution (i.e. the restrictions should be for a legitimate purpose and conform to the principle of proportionality). Therefore, each restriction must be justified in view of the aim it seeks to achieve. In view of this, a constitutionally conforming result would rather be achieved by establishing a list of prohibited items (and not a list of items which are allowed). On this basis, the Chancellor reached the conclusion that the above regulation with restrictions on the use of items is highly problematic in the light of the Constitution.

The Chancellor pointed out that restrictions on the use of religious paraphernalia constitute an interference in the exercise of the freedom of religion (§ 40 of the Constitution). Taking away a marriage ring constitutes interference with the general personality rights and the sphere of privacy under § 19 and § 26 of the Constitution.

The Chancellor recommended to the Director General of the PBGB to ensure that persons in the centre can use items of high personal value (marriage ring, religious paraphernalia) even when these are made of precious materials.

The Chancellor also recommended to the Minister of Internal Affairs to analyse the restrictions on the possession and use of items established by the Obligation to Leave and Prohibition on Entry Act and internal rules of the expulsion centre, taking into account the above explanations, and initiate amendment of the respective legislation to bring them into conformity with the Constitution.

The PBGB replied that it supports the proposal to amend the internal rules of the centre, so as to allow the detainees to possess items of high personal value. A proposal for amending the internal rules of the centre would be submitted to the Minister of Internal Affairs.

(6) As a sixth range of issues, the Chancellor of Justice dealt with issues concerning visits.

In 2007, the Chancellor made a recommendation to amend the provisions regulating visits, so as to allow visits also during weekends (outside the working hours) and for longer than 0.5 hours at a time. Examination of the files showed that visits longer than 0.5 hours had been allowed (sometimes visits lasted for several hours) but the visits still took place only during the periods established in the internal rules.

The Chancellor repeated his recommendation to enable having visits outside the working hours, in particular if persons having a family in Estonia are detained in the centre. The Chancellor also recommended to the Minister of Internal Affairs to analyse the regulation in the internal rules of the centre and establish a more flexible framework for arranging visits, also allowing for visits during weekends when necessary.

Secondly, the Chancellor assessed the practice of the centre which prohibits persons to be expelled to have visits from persons with a previous conviction. For example, during the follow-up visit of 30 September 2009 it was found that a person was prohibited to have a visit with their spouse because the spouse had a criminal record.

The Chancellor explained that allowing of visits may be necessary to ensure a person's fundamental right to the inviolability of family and private life. Allowing of visits is also an important guarantee for the prevention and detection of ill-treatment. As the officials of the centre verify data of the persons coming for a visit, it is possible, in case the data give reason to suspect the aims of the visitor, to take necessary alternative measures for avoiding the relevant risk, instead of establishing a blanket ban on visits for certain categories of persons. The law also provides for a possibility to search the personal effects of a visitor if necessary, and the visit also takes place in the presence of a migration supervision official. With the help of relevant measures, it is possible to monitor the behaviour of visitors and thus a total ban on visits could be unjustified as being disproportionate.

The Chancellor noted that on 24 December 2010 an amendment to § 26<sup>10</sup> of the Obligation to Leave and Prohibition on Entry Act entered into force, establishing in subsection 7 the cases when persons to be expelled are not allowed to have a visit with another person. The Chancellor doubts that establishment of imperative grounds for the prohibition of a visit by an Act is compatible with § 26 of the Constitution.

On this basis, the Chancellor reached the conclusion that the practice of the centre which prohibits visits with persons having a criminal record is contrary to the version of the Act valid until 24 December 2010 and to the Constitution. Therefore, the Chancellor recommended to the Director General of the PBGB to enable visits in conformity with the law and the Constitution.

The Chancellor also recommended to the Minister of Internal Affairs to analyse constitutionality of § 26<sup>10</sup>(7) of the Obligation to Leave and Prohibition on Entry Act.

Another issue which arose concerned the fact that a request for a visit must be submitted in advance. If a person comes for a visit without a prior request, no visit is allowed on the same day (except a visit with a lawyer), as the request is processed and the person is notified when they can come for a visit.

Based on the principle of good administration, the Chancellor recommended to the Director General of the PBGB to process requests for a visit submitted on the spot in an expedited manner.

During the inspection, the residents of the centre also pointed out that in certain cases the procedure for visits was very strict. The persons claimed that visits had been interrupted, for example, for a reason that a person wished to hold the hand of their visiting spouse.

The Chancellor of Justice recommended to the Director General of the PBGB to ensure that no excessive security measures are applied during visits and that visits are not interrupted for formal reasons.

The PBGB replied that performing additional tasks is not possible without increasing the staff of the centre, for which the PBGB lacks budgetary resources. Requests for a visit submitted on the spot are processed at the first opportunity, in case the head of the centre is present then immediately, and if no reason to refuse a visit exists and the visiting room is vacant then a person who has come for a visit is enabled to have a visit with a detainee in the centre on the same day. The PBGB was of the opinion that no visits had been interrupted for merely formal reasons and no excessive security measures had been applied during the visits.

(7) Seventh, the Chancellor dealt with issues of using the telephone.

In view of the CPT recommendations for different countries, the Chancellor recommended to the Director General of the PBGB to enable persons to be expelled who have no financial resources to make at least one telephone call a month at the expense of the centre. The Chancellor also recommended to the Minister of Internal Affairs to analyse the reasons why the residents have been prohibited to use the mobile phone until now, and whether and on which conditions the use of the mobile phone could be allowed.

The PBGB replied that since December 2010 the centre has a new telephone communication system which, unlike the previous system, enables incoming calls from other countries. However, there is no possibility to call collect and due to the lack of resources the PBGB does not consider it possible to issue calling cards to the persons to be expelled. The PBGB explained that the use of mobile phones in the centre was not allowed due to security considerations. Mobile phones could be used for quick forwarding of information about the location and movement of the security team and officials, as well as about the time, location and route of an escort, the number of escorting officials and their equipment, which could lead to facilitating an escape or obstructing the work of officials. Mobile phones can be used to coordinate delivery of items prohibited for the residents of the centre or throwing such items into the exercise yard.

(8) As the eighth range of issues, the Chancellor analysed compliance with his recommendations made in 2009 in connection with expanding the possibilities for spending free time for the residents.

The Chancellor noted that the possibilities for spending free time at the centre are still extremely limited. Most of the possibilities include passive activities, while the range of purposeful activities is very limited. There is also no reading material in Arabic, Pashto, Farsi, Dari and other languages the speakers of which are detained in the centre increasingly often.

The Chancellor recommended expanding the range of activities offered to persons detained in the centre for a longer period, taking as far as possible into account the needs of a specific person. Such activities and materials could include handicraft, means to engage in arts, language study materials or courses, etc. The Chancellor also recommended analysing possibilities to enable long-term residents of the centre to engage in sports outside the centre.

The PBGB replied that it continued to seek possibilities to improve and diversify the possibilities for spending free time for the persons detained in the centre. The PBGB is of the opinion that allowing detainees to engage in sports outside the centre would be contrary to the principle of detention in the expulsion centre.

(9) Ninth, the Chancellor assessed the organisation of translation in the centre and verified compliance with the Chancellor's previous relevant recommendations.

The Chancellor repeated his recommendation to the Director General of the PBGB to apply the right of discretion in deciding the translation of an administrative act (including taking into account the significance of the fundamental rights and freedoms at stake, the ability of the person to understand Estonian, financial possibilities for using the assistance of an interpreter to present a document or understand the reply) and, if a person does not understand Estonian and they have no funds to involve an interpreter, to attach written translation of administrative acts restricting the rights of a person into the language which the person understands. The Chancellor pointed out that in order to notify persons to be expelled about the relevant right it is necessary to supplement the written information material with regard to issues of translation.

The PBGB replied that persons to be expelled are ensured written translation of the decisions restricting their rights. Forms of the decisions used in the centre to restrict the rights of persons are translated into Russian and English, a separate written translation is made of the operative part of the decision made in respect of a person. If necessary and possible, all decisions restricting the rights of persons are also translated to them orally and, if necessary, the content of a decision made in respect of a person is explained to them orally.

In addition, the Chancellor dealt with the issue of translation of information materials used to explain the rights of persons to be expelled. The PBGB replied that the relevant information materials have been translated into Russian, English, Arabic, Portuguese, French, German, Hindi and Chinese. The Chancellor recognised the fact that the written information materials have already been translated into eight languages. However, the materials had not yet been translated into Dari, Pashto or Farsi although the number of speakers of those languages detained in the centre is increasing.

Therefore, the Chancellor recommended to the Director General of the PBGB to translate the information material also into other languages which are more widely spoken among the persons detained in the expulsion centre.

The PBGB replied that the information material “Rights and duties of a person to be expelled” would be translated into Georgian, Dari, Pashto, Farsi, Armenian, Azerbaijani when possibility arises.

(10) Tenth, the Chancellor verified compliance with this recommendations of 2007 and 2009 concerning catering and the possibility to use a refrigerator.

The Chancellor recommended to the Director General of the PBGB to take better account of the eating habits of the persons to be expelled when organising catering in the centre. The Chancellor also repeated his recommendation to enable persons staying in the centre for a longer period the possibility to use a refrigerator.

The Chancellor also recommended to the Minister of Internal Affairs to analyse the regulative provisions on catering in the legislation and to initiate amendment of § 26<sup>7</sup>(1) and (4) of the Obligation to Leave and Prohibition on Entry Act in order to ensure that persons to be expelled could receive special food in the centre if the need arises from a person’s religious convictions, and if possible also take into account the eating habits of the detainees in the centre.

The PBGB replied that, whenever necessary, persons to be expelled are catered on the basis of a special menu which takes into account the religious and health needs of the persons. The PBGB did not consider it practicable to provide a refrigerator as the risks associated with providing a refrigerator were proportionally greater for the persons to be expelled and for the centre than the benefits it would offer.

(11) The Chancellor of Justice also assessed compliance with compulsory school attendance in case of detention in the expulsion centre.

During the period from 1 October 2009 to 31 October 2010, several children in the age of compulsory school attendance were detained in the centre. The Chancellor pointed out that in accordance with the law the compulsory school attendance also extends to foreign citizens or persons with undetermined citizenship staying in Estonia. Also under the EU Directive, access to education for minors should be guaranteed; the obligation to organise this depends on the duration of their stay. Thus, minors in the age of compulsory school attendance detained in the centre should be guaranteed a possibility to acquire education taking into account the duration of their stay in the centre. Similarly to the Imprisonment Act, possibilities for acquiring education should be created at least if a minor stays in the centre for more than one month.

On this basis, the Chancellor recommended to the Director General of the PBGB to create possibilities for acquiring education for persons in the age of compulsory school attendance detained in the centre.

The PBGB replied that on 14 January 2010 it had started negotiations with the Ministry of Education and Research to create possibilities for persons in the age of compulsory school attendance in the centre to acquire education.

(12) In addition, it was verified how female detainees in the centre can communicate with other detainees if they wish.

The inspection visits have revealed that generally significantly fewer women than men are detained in the centre, so that usually there is only one woman detainee. As a rule, for security reasons, women and men are housed on separate floors and they also have separate areas for spending time outside the building. If a person is detained alone this may have an additional adverse effect on their psychological well-being.

The Chancellor recommended to the Director General of the PBGB to enable women detainees to communicate with other persons in the centre if they wished, while taking additional measures to guarantee the security of the person if necessary.

The PBGB replied that female and male detainees can communicate with each other during free time through the wire fence in the exercise yard. They can also make calls to telephones in different accommodation sections.

(13) The inspection visit revealed that due to the organisation of security services, security staff and officials of the centre are not constantly present in the accommodation section, and therefore there have been delays with the possibility for detainees to call for assistance. The Chancellor recommended to the Director General of the PBGB to analyse the situation and consider a possibility to install call buttons also in the accommodation sections.

The PBGB replied that it would look for possibilities for installing a call button within the range of vision of the video surveillance systems in all the accommodation sections.

(14) The inspection visit revealed that due to budgetary reasons windows in the accommodation sections had no curtains. The logbook of the centre contained a description of an incident where detainees had tried to use bed sheets as curtains. The Chancellor recommended to the Director General of the PBGB to provide curtains for the accommodation sections.

The PBGB informed the Chancellor that curtains had been fitted in the accommodation sections on 19 January 2011.

## V. INSTITUTIONS ORGANISING THE RECEPTION OF ASYLUM SEEKERS

### 1. General outline

In 2010, advisers to the Chancellor of Justice carried out own-initiative announced visits to Illuka Reception Centre for Asylum Seekers (hereinafter also called the reception centre) (Inspection visit to Illuka Reception Centre for Asylum Seekers, case No 7-7/091780) and premises of the PBGB which are used for accommodating asylum seekers during the performance of procedural steps (Inspection visit to the PBGB accommodation facilities for asylum seekers, case No 7-7/091782). The inspection visits took place respectively on 22 January 2010 and 26 January 2010.

During the inspection visits, advisers to the Chancellor of Justice, while also performing the function of the national preventive mechanism under Article 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, verified compliance with fundamental rights and freedoms of individuals in institutions organising the reception of asylum seekers.

As a result of the inspection, the Chancellor made recommendations to Illuka Reception Centre for Asylum Seekers and the Minister of Social Affairs, as well as the Director General of the PBGB and the Minister of Internal Affairs, for guaranteeing the principles of lawfulness and good administration.

On 21 February 2011, the Chancellor made an enquiry with the Minister of Social Affairs, Illuka Reception Centre for Asylum Seekers and Director General of the PBGB concerning implementation of his recommendations.

As during the inspection visit also an issue of conformity of the Act on Granting International Protection to Aliens and the Minister of Internal Affairs Regulation No 47 of 7 July 2006 “Internal rules in the official premises of the Police and Border Guard Board” with the Constitution, the law and the EU Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (hereinafter also referred to as the Reception Conditions Directive) arose, the Chancellor also sent an additional memorandum to the Minister of Social Affairs and the Minister of Internal Affairs.

In the memorandum, the Chancellor found that § 33(1) of the Act on Granting International Protection to Aliens is contrary to § 20 and § 11 of the Constitution, as the Act lays down an imperative requirement that an alien who has submitted the asylum application while staying in an expulsion centre or in the course of execution of the expulsion should be detained in an expulsion centre until the termination of the asylum proceedings.

Second, the Chancellor reached the conclusion that § 12(2) clause 3 is contrary to § 10 and § 28 of the Constitution and Article 15 of the EU Council Directive 2003/9, as the Act only provides for arranging emergency care to asylum seekers.

Third, it was found that delegating norms for establishing internal rules of these institutions are presented in a way which leaves the substance or scope of the delegating norm unclear. Therefore, the Chancellor pointed out that § 12(8) and § 32(8) of the Act on Granting International Protection to Aliens are in conflict with § 3(1), first sentence, of the Constitution to the extent that the delegating norm for establishing the internal rules does not reflect the substance and scope of the norm.

Fourth, it was found that the internal rules for official premises of the Police and Border Guard Board established by the Minister of Internal Affairs Regulation No 47 of 7 July 2006 contain several provisions which have no legal basis and which interfere with fundamental rights (freedom of movement, right of ownership, etc). On this basis, the Chancellor reached the conclusion that § 5(2), § 7(1) clause 2, § 6(3) clause 2, § 6(3) clause 4, § 6(3) clause 6 and § 6(3) clause 8 of the internal rules are in conflict with the Act on Granting International Protection to Aliens and § 3(1), first sentence, of the Constitution.

The following part contains an overview of the problems which occurred both in Illuka Reception Centre for Asylum Seekers and the premises of the PBGB.

The inspection visits revealed that one of the recurring problems in these institutions was notification of asylum seekers about their rights and duties.

The reception centre had a written text with internal rules of the centre. The internal rules, approved by the order No 28 of 27 August 2007 of the head of the centre, included the procedure on the payment of benefits, rules of daily life, the list of prohibited activities, regulation of visits. Internal rules were given to the asylum seekers also in writing; they were available in Estonian, English and Russian.

Thus, written materials presented to the asylum seekers included rules of behaviour in the reception centre. However, the materials did not include other rights and duties of asylum seekers arising from the law. In addition, the wording of § 2(4) of the internal rules (reduction of benefits depending on the number of days spent in the reception centre) could be interpreted in different ways.

The inspection visit to the premises of the PBGB revealed that the explanation of rights and duties to asylum seekers was based on the list provided in appendix 1 to order No 57 of 10 March 2009 of the Director General of the Citizenship and Migration Board "Procedure for the processing of asylum applications, extension of international protection, asylum seekers' requests for a work permit in Estonia, and annulment of residence permits". Explanation of the rules of behaviour during the stay in accommodation areas was based on the list provided for in appendix 1 to order No 58 of 10 March 2009 of the Director General of the Citizenship and Migration Board. Asylum seekers signed a confirmation that these information materials had been explained to them. The above information materials containing the rights and duties relating to accommodation areas, as well as the rights and duties of asylum seekers, were available in writing in Estonian, Russian and English, but they were not given to the asylum seekers in writing. In addition, printed information material "Applying for asylum in Estonia" was available in eight languages at the offices of the PBGB.

Examination of the information materials showed that they described the rights and duties of asylum seekers during the asylum proceedings as well as in connection with reception conditions (accommodation, services and other issues of daily life). However, the rights and duties in different contexts were not clearly distinguished and no consequences of violation of the duties were indicated. Some information was presented in very general terms. For example, it was mentioned that an asylum seeker is entitled "in case of necessity, to victim support pursuant to the procedure established in the Victim Support Act" but there were no explanations about the content of the rights, the conditions and procedure for applying. The information materials also contained a general reference that an asylum seeker may have recourse to the court in case of violation of their rights and freedoms. Rules of behaviour in the accommodation areas included a note that in case of necessity an asylum seeker may receive money for food but its rate or the procedure of payment were not specified.

In addition, it was found that asylum seekers interviewed during the inspection visits were not aware which services are provided to them by the non-profit association Johannes Mihkelson Centre.<sup>22</sup>

Under § 10(2) clause 1 of the Act on Granting International Protection to Aliens, an applicant has the right to receive within fifteen days as of the submission of the application for asylum or for residence permit oral and written information in a language which they understand concerning their rights and obligations and the consequences of the failure to perform the obligations in the asylum proceedings, the proceedings of the residence permit on the basis of temporary protection and during the period of validity of international protection. Under § 12(2) clause 5 of the Act, the reception centre is required to inform the asylum seekers about their rights and duties.

Under Article 5 paragraph 1 of the EU Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Member States shall inform asylum seekers, within a reasonable time not exceeding fifteen days after they have lodged their application for asylum with the competent authority, of at least any established benefits and of the obligations with which they must comply relating to reception conditions. Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations

22 Grant agreement No 7.1-9-1/94, project of the European Refugee Fund and the Ministry of Internal Affairs "Improving the reception conditions of asylum seekers through the support person service and other supporting services".

that might be able to help or inform them concerning the available reception conditions, including health care. Under paragraph 2, Member States shall ensure that the information referred to in paragraph 1 is in writing and, as far as possible, in a language that the applicants may reasonably be supposed to understand. Where appropriate, this information may also be supplied orally.

Thus, administrative authorities are required to provide asylum seekers with information concerning their rights and duties, as well as consequences of failure to comply with the duties, both orally and in writing in a language which an asylum seeker understands. The information provided should help an asylum seeker understand the essence of their rights and which steps need to be taken to exercise the rights. The Chancellor explained that explaining the rights orally is necessary in order to provide, through an immediate contact and in simple language, an overview of all the rights and duties which an asylum seeker must observe. In case of presenting the information in writing, an asylum seeker can also refer to it in the future if necessary.

On this basis, the Chancellor made the following recommendations:

- 1) ensure that asylum seekers receive all the relevant information concerning their rights and duties both orally and in writing, including, inter alia, the following information: (1) information on accommodation, financial benefits, translation, health services, organisation of transport and other services; (2) specific procedure for the use of the relevant rights (who should be contacted); (3) duty to stay in the reception centre at night; (4) grounds for stay outside the reception centre and the procedure for requesting an authorisation for this; (5) indicate clearly in the information materials the possibility and procedure of filing complaints in connection with the stay in the reception centre, as well as possibility of filing complaints with other institutions (Ministry of Social Affairs, administrative court, Chancellor of Justice);
- 2) specify the wording of § 2(4) of the internal rules, explaining that it concerns a situation where an asylum seeker arrives in the reception centre in the middle of the current calendar month;
- 3) ensure that the relevant information is provided both orally and in writing and in a language understood by the asylum seeker, and arrange translation of the information material into other more widely used languages.

The Chancellor pointed out that cooperation with the Police and Border Guard Board might be necessary to implement the recommendation given in point 1, in order to specify about which rights and duties information to the asylum seekers is given by the PBGB and which rights and duties are explained by the reception centre.

The Chancellor made the following recommendations to the PBGB:

- 1) in the information materials for asylum seekers, distinguish clearly between the rights and duties in connection with the asylum proceedings and the rights and duties relating to reception conditions (including accommodation, payment of benefits, right to work, duty to stay in the reception centre, etc);
- 2) indicate the consequences of violation of duties by an asylum seeker;
- 3) describe in the information materials the substance of the rights and procedure for application – in which cases are asylum seekers entitled to receive assistance and whom they should contact in connection with applying for state legal aid and victim support;
- 4) indicate clearly in the information materials the possibility of filing complaints in case of problems relating to accommodation areas and distinguish the in-house complaint procedure from other avenues of complaint (Chancellor of Justice, administrative court);
- 5) indicate the rate and procedure of payment of the food money;
- 6) specify the information material “Rights and duties of asylum applicants” with regard to translation issues, so as to present all the information in connection with involving an interpreter/translator in the proceedings and payment for translation/interpretation;
- 7) give the information materials concerning the rights to asylum seekers in writing;
- 8) translate introductory information materials for asylum seekers into other more widely used languages;
- 9) make available for asylum seekers a form for applying for state legal aid.

In addition, the Chancellor recommended to the Minister of Internal Affairs to draw up information material on services provided by the non-profit association Johannes Mihkelson Centre and ensure that during the period of operation of the project asylum seekers are informed about the relevant services.

Illuka Reception Centre for Asylum Seekers informed the Chancellor that in 2010 information materials for asylum seekers were drawn up which have been translated into Russian, English, French, Arabic, and Dari. In 2011, translation of the internal rules will be organised.

The PBGB informed the Chancellor that the Director General by his order No 330 of 20 July 2010 approved "The procedures for designating the member state responsible for the asylum application and its examination", appendix 5 of which ("Rights and duties of asylum seekers") contains the list of rights and duties to be explained to asylum seekers, which was specified on the basis of recommendations given by the Chancellor of Justice. Information materials for asylum seekers will be revised in 2011 in the framework of the project MINAS-5, launched by the Tallinn office of the International Organisation for Migration and financed by the European Refugee Fund and the Ministry of Internal Affairs. The work for revising the information materials has already started. The final number of the languages into which the material is translated has not yet been decided. If possible, information material is given to asylum seekers in writing in a language understood by them. The PBGB has made application forms for state legal aid available in accommodation facilities for asylum seekers located at Vilmsi Street 59. Also, officials of the International Protection Division of the Status Determination Bureau under the Citizenship and Migration Department of the PBGB can hand over the relevant application form to asylum applicants together with other information materials given to them and, if necessary, an additional oral explanation of the procedure for applying for state legal aid is given to an asylum seeker.

Second, the issues of provision of health services to asylum seekers arose during the inspection visit.

The inspection visit to the reception centre revealed that usually no initial health examination was performed upon admission of asylum seekers to the centre and no possibility of infectious diseases tests was provided. Asylum seekers themselves had to inform the staff of the centre about which problem they wanted to see the doctor. One asylum seeker also noted that in certain cases no interpreter was present during the provision of health services.

During the inspection visit the head of the reception centre admitted that, although the centre had provided access to specialised medical care for the asylum seekers, it is unclear at what level health services to asylum seekers should be ensured.

The inspection visit to the premises of the PBGB revealed that only emergency medical assistance was ensured to asylum seekers who had received an accommodation permit.

Under § 28(1) of the Constitution, everyone has the right to the protection of health. Under § 12(2) clause 4 of the Act on Granting International Protection to Aliens during asylum proceedings or proceedings of temporary protection the reception centre should arrange emergency medical care and medical examinations for the applicants. Under § 32(6) and § 12(1) clause 3 of the Act, emergency medical care and health examinations should be arranged to asylum seekers in case of necessity. Under Article 15 of the Reception Conditions Directive, Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness; Member States shall provide necessary medical or other assistance to applicants who have special needs.

The Chancellor reached the conclusion that, in view of the Supreme Court opinion concerning interpretation of § 28(1) of the Constitution, and the obligation under Article 15 of the Directive, on the basis of § 12(2) clause 3 of the Act on Granting International Protection to Aliens both general and specialised medical care should be guaranteed within the initial as well as subsequent medical examination if this is necessary for the treatment of essential diseases.

Although the Act on Granting International Protection to Aliens provides for a possibility of accommodating asylum seekers in different facilities, the level of health services provided to asylum seekers may not

depend on the type of accommodation facility in which an asylum seeker stays, i.e. whether they are staying in the reception centre or in the premises of the PBGB for the performance of procedural acts.

The Chancellor of Justice made the following recommendations to the reception centre:

- 1) enable performing the initial health examination of asylum seekers arriving in the reception centre;
- 2) ensure to the asylum seekers both general and specialised medical care within the initial as well as subsequent medical examination if this is necessary for the treatment of essential diseases. In case of certain health services gender differences need to be taken into account;
- 3) ensure that both within the initial as well as subsequent medical examination the need for psychological or psychiatric counselling of asylum seekers is assessed;
- 4) inform asylum seekers about the possibilities of the initial health examination as well as psychiatric and/or psychological counselling;
- 5) ensure, in case of necessity, the involvement of an interpreter in the provision of health services;
- 6) when entering into contracts for the provision of health services, take into account that it is advisable that the service provider has been prepared for work with asylum seekers, is aware of the distinct character of asylum seekers as a group, as well as their cultural, linguistic and religious particularities;
- 7) consider the possibility of organising provision of regular psychiatric and/or psychological counselling in the reception centre;
- 8) analyse the organisation of health services as a whole and consider whether any changes are needed, so as to ensure that the service is provided on the spot in the reception centre and asylum seekers have access to immediate medical care by a service provider who is aware of the distinct character of asylum seekers as a group, and ensure confidentiality in the processing of health data, dispensing of medicines and documenting of services and costs;
- 9) if necessary, specify in the contract for the provision of health services the content of the services to be provided to asylum seekers, the requirements for the service provider and compliance with the principle of confidentiality during the transfer of documentation concerning the provision of health services.

The Chancellor of Justice made the following recommendations to the Director General of the PBGB:

- 1) ensure performing of an initial health examination of asylum seekers if necessary. This includes first and foremost situations where (a) an asylum seeker arrives for performing initial procedural steps and no health examination has been carried out previously and the asylum seeker expresses the wish to undergo such an examination; (b) during an interview with officials an asylum seeker refers to ill-treatment or the use of excessive coercion in respect of him or her; or (c) there are visible signs indicating ill-treatment or need for medical care;
- 2) revise the information materials for asylum seekers, so as to indicate the right to an initial health examination and treatment of diseases in addition to emergency medical care, also explaining which steps asylum seekers need to take to exercise these rights.

As was mentioned above, the Chancellor also sent a memorandum to the Minister of Social Affairs for specifying the regulative framework for the provision of health services under the Act on Granting International Protection to Aliens.

The Minister of Social Affairs in his reply to the Chancellor's enquiry admitted that in 2010 the Ministry did not reach to complete the analysis of health services provided to asylum seekers.

The reception centre explained in reply to the Chancellor's recommendations that health examination for all the asylum seekers arriving in the centre has been enabled but the health examination has taken place when the asylum seekers have had a need and have expressed a wish for it. When concluding contracts for the provision of health services it is not possible to ensure that the service provider has undergone preparation for work with asylum seekers, is aware of the distinct character of asylum seekers as a group, as well as their cultural, linguistic and religious particularities. Currently, no doctor trained at the University of Tartu receives such preparation and the reception centre cannot offer such training. Since June 2010, a psychologist within the programme operated by Johannes Mihkelson Centre deals with asylum seekers in the reception centre. Provision of health services on the spot in the centre is not conceivable within the current budgetary resources.

The PBGB in reply to the Chancellor's enquiry admitted that no substantial progress with the issue of provision of health services to asylum seekers had occurred by the beginning of 2011. After the creation of the PBGB on 1 January 2010, the priority was to harmonise and regulate in a uniform manner asylum procedures in the PBGB. Internal guidelines of the PBGB do not establish the duty of performing the initial health examination of asylum seekers. By the beginning of 2011, initial health examination of asylum seekers had never been performed because no need for this had occurred. There had also been no need to provide emergency or other medical care to asylum seekers. The PBGB noted that in case of a need health examination of asylum applicants is performed.

The following part contains an overview of additional recommendations made by the Chancellor as a result of the inspection visits.

## **2. Inspection visit to Illuka Reception Centre for Asylum Seekers**

In addition to the above general issues in connection with the provision of health services to asylum seekers, the issue of guaranteeing confidentiality of health data concerning access to a doctor, handing over letters of referral to the staff of the reception centre and drawing up expense documents for the provision of health services arose during the inspection visit.

The Chancellor made the following recommendations to the reception centre: 1) ensure compliance with the principle of purposefulness and minimalism in the processing of personal data of asylum seekers and, on this basis, as a rule not oblige asylum seekers to disclose the substance of their health data as a precondition for a doctor's appointment more than is necessary for arranging the assistance; 2) ensure submitting of expense documents concerning health services to the Ministry of Social Affairs, which handles the accounts, so that documents do not reveal personalised health data.

The reception centre noted in its reply that expense documents concerning health services are sent by the institutions providing the service and the institution cannot guarantee that the expense documents do not reveal any personalised health data if such data have been entered in the documents.

Second, the issue of whether the principle of personal data protection is guaranteed when organising the purchasing of medicines and whether the activity of the reception centre in refusing to purchase certain medicines is in conformity with the law arose during the inspection visit.

The Chancellor made the following recommendations to the reception centre: 1) ensure purchasing of medicines prescribed to asylum seekers by a doctor; 2) arrange purchasing of medicines in a manner that asylum seekers can maintain the confidentiality of their health data if they wish; 3) submit expense documents concerning purchasing of medicines in a manner which does not allow identifying a specific medicine and which complies with the principles of confidentiality of personal data; 4) provide a sufficient quantity of medical aids to asylum seekers for administering the prescribed medicines (e.g. disposable syringes and pen needles for the so-called syringe pens).

The reception centre replied that the centre had guaranteed purchasing of medicines prescribed by the doctor and aids for administering the medicines. Purchasing of medicines is organised so that persons who have a prescription from a doctor give the prescription to the head of the centre who brings the necessary medicines from the pharmacy.

Third, compliance with the principles of processing personal data in organising video surveillance in the reception centre was verified.

The Chancellor recommended to the reception centre to notify asylum seekers in a language understood by them about the use of video surveillance and post the name and contact data of the processor of the data visibly in the reception centre.

The reception centre replied that the existence of video surveillance is notified through a note posted on the doors and the information board.

Fourth, the issue of justification of restrictions established by the internal rules of the reception centre arose during the inspection visit.

Under § 5(2) of the internal rules, minors are not allowed to visit the asylum seekers (except an asylum seeker's children) and under § 5(4) the head of the centre may prohibit visits if necessary.

The Chancellor pointed out that such restrictions interfere with fundamental rights of persons. The Act on Granting International Protection to Aliens does not contain a basis for establishing such restrictions. On this basis, the Chancellor recommended that the reception centre should amend § 5(2) and § 5(4) of the internal rules, so as to bring them in line with the Act and the Constitution.

The reception centre replied that amendments to the internal rules would be made and the above provisions would be removed from the rules.

Fifth, it was found that the reception centre did not register applications and other enquiries submitted by persons.

The Chancellor recommended to the reception centre to ensure registration of applications and enquiries by persons and replying to them.

The reception centre promised to ensure registration of applications and enquiries by persons.

Sixth, ensuring of security in the reception centre was verified. Manned guarding in the reception centre stopped on 1 July 2009 as the budgetary resources of the centre were not sufficient for providing the guard service.

The Chancellor recommended to the reception centre to guarantee manned guarding to ensure security in the centre. The primary consideration should be the presence of a guard at night, during weekends and public holidays when the staff are not present in the centre.

The reception centre replied that since 1 February 2011 the centre has manned guarding. The service is provided by AS Securitas. Working hours of the guards are 18.00–06.00 on weekdays; during rest days and holidays a guard is present 24 hours.

Seventh, it was assessed how the reception centre has arranged interpreting in communicating with asylum seekers (in addition to interpreting when explaining to asylum seekers their rights or providing health services).

The Chancellor made the following recommendations to the reception centre: (1) ensure that asylum seekers also have a possibility to receive information on practical issues relating to daily life and contact the staff of the reception centre in a language spoken and understood by them; (2) analyse how to ensure on a daily basis the possibility to exercise this right if an asylum seeker speaks a language which the staff of the centre do not understand; (3) inform asylum seekers clearly how interpreting is arranged in such cases; (4) conclude advance agreements for interpreting to ensure quick involvement of an interpreter in case of need.

The reception centre admitted that it is extremely complicated to ensure the possibility of exercising this right on a daily basis if an asylum seeker speaks a language which the staff of the centre do not understand. The reception centre cannot guarantee the possibility of interpretation on a daily basis as long as the budget of the centre is not sufficient to cover any interpreting costs. If an asylum seeker speaks a language which the staff do not understand, a solution is found on a case-by-case basis to ensure access to information (e.g. involvement of interpreters, assistance of support persons from Johannes Mihkelson Centre, etc).

Eighth, the Chancellor made recommendations to the Minister of Social Affairs and the reception centre in connection with training of the staff of the centre: (1) provide in-service training on issues of cultural, linguistic and religious particularities and intercultural conflict, as well as recognition of stress symptoms and risk of suicidal behaviour; (2) provide further language training, so that the staff would be able to communicate with the asylum seekers with regard to at least practical daily issues.

The reception centre admitted that the budget of 2010 did not contain any resources for training and therefore the staff did not participate in any training events.

Ninth, during the inspection visit asylum seekers raised the issue that the computer did not have a microphone and therefore communication through the computer was hindered. The Chancellor recommended to the reception centre to install a microphone in the computer.

The reception centre replied that it had installed a functioning microphone to the computer.

Tenth, the inspection visit revealed that the reception centre did not have a first-aid chest containing standard supplies. The housekeeping room had a first-aid kit the content of which the staff of the centre supplemented according to need, but it was not a first-aid kit containing standard supplies.

The Chancellor recommended to the reception centre to place in the accommodation area of the centre a first-aid chest containing standard supplies, mark the location of first-aid equipment, post visibly the telephone numbers for calling assistance and place visibly the data of the staff who are proficient to provide first aid. In view of the language barrier of asylum seekers, illustrating the information with universally understandable symbols should also be considered.

The reception centre replied that a first-aid chest had been placed in a clearly visible location and the social worker shows it to all the persons arriving in the centre.

In conclusion, it was found that the provision of necessary services by the reception centre was hindered due to the centre's very limited budget which has been cut even further in the recent years. In addition, the isolated location of the centre also posed an obstacle to proper provision of services.

The Chancellor recommended to the Minister of Social Affairs to ensure resources for the reception centre for proper provision of the required services and analyse obstacles to the provision of services arising from the centre's location and its adverse effect to the well-being and health of the asylum applicants.

The Minister of Social Affairs replied that in 2010 an initial analysis was made, mapping the situation in the reception centre, analysing the connection between its location and current situation, asking feedback from the centre's main cooperation partners, and making preliminary proposals for future organisation of the work of the centre. The relevant financial and legal analysis is being carried out. At the time of the reply, the Ministry of Social Affairs had not yet made a decision concerning the proposals but presumably the decisions with regard to the location of the reception centre would be made in the first half of 2011.

In addition, the Chancellor dealt with problems concerning support established by legislation for persons afforded international protection upon taking up residence in a local government.

### **3. Inspection visit to the premises of the Police and Border Guard Board**

The inspection revealed that the security guard service in the accommodation facility of asylum seekers (Vilmsi Street 59) was provided by the security company G4S Estonia during off-hour periods. In connection with this, an issue arose whether the authority of the security guards providing the service was clearly defined and their training sufficient for contact with asylum seekers.

The inspection revealed that the contract concluded with G4S mainly regulated the duties of the guard service provider in connection with responding to external attacks. Although the service provider was obliged to ensure order and security on the guarded premises, the contract did not specify the duties and authority of security staff in connection with maintaining order and security in the accommodation facility. Although the office building at Vilmsi Street 59 also houses the accommodation facility for asylum seekers in addition to usual offices, specific duties and authority of the security staff in respect of asylum seekers had not been regulated; only a general regulation valid for the whole office building had been established.

The Chancellor found that in view of the specific nature of the office building in comparison with usual offices the regulation provided for in the contract was insufficient, considering that also asylum seekers were accommodated in the building and therefore a need to give orders to them or a need to restrict the rights of persons for maintaining order and security may arise. For example, the right of security staff to restrict the freedom of movement of asylum seekers was unclear.

In addition, it was found that no additional requirements for the training of security staff providing the guarding service had been established concerning their awareness of cultural, religious and linguistic nature and the distinct status of asylum seekers.

On this basis, the Chancellor made the following recommendations: 1) specify the authority of the security staff in connection with maintaining order and security in the accommodation facility; 2) ensure that persons maintaining order and security in the accommodation facility have been prepared to work with asylum seekers (including knowledge of the status of asylum seekers as a group, their cultural, linguistic and religious particularities).

The PBGB replied that the guard bureau of the Public Order Department of the PBGB has taken over the provision of guarding services at Vilmsi Street 59. A guard from the guard bureau is present at the site during off-hours, at weekdays 17.00–09.00, and during weekends and public holidays 24 hours. The guards are not police officers but public servants; if necessary, assistance to the guard is provided by car patrol police officers. Maintenance of security and fire alarm systems on the site will continue to be provided by G4S according to the current contract. Guard officials from the guard bureau proceed in their work from the job description approved by the order No 512 of 6 December 2010 of the Director General of the PBGB, as well as the “Guidelines for behaviour in the accommodation facility” approved by the order No 56 of 1 January 2010 of the Director General of the PBGB, and guidelines “Special duties of the officials of the guard bureau of the Public Order Department of the Police and Border Guard Board on the guarded site” approved by the head of the guard bureau. The guard officials also proceed from the internal rules of the guarded site and other legislation. Guard officials have completed the training course “Intercultural communication” offered by the researcher Anastassia Zabrodskaja at Tallinn University.

Second, it was found during the inspection that video cameras were installed in public areas (stairway, corridor and common room) of the accommodation facility for asylum seekers in the premises of the PBGB, but no information about the use of video surveillance was posted.

The Chancellor recommended to the Director General of the PBGB to notify asylum seekers in a language understood by them about the use of video surveillance and post the relevant information visibly in the premises.

The PBGB replied that stickers with notification of the use of video surveillance have been placed on the windows and front doors of the building at Vilmsi Street 59. Additionally, the PBGB posted a notification in English and Russian on the information board in the common room of the asylum seekers.

Third, the issue of whether the transfer of data of the asylum seekers, in certain cases also sensitive personal data, by the PBGB to a contact person in the non-profit association Johannes Mihkelson Centre in connection with the provision of services to asylum seekers was in conformity with the Act on Granting International Protection to Aliens and the Personal Data Protection Act.

The Chancellor reached the conclusion that the Act on Granting International Protection to Aliens does not contain a legal basis for the transfer of data, including sensitive personal data, of asylum seekers to Johannes Mihkelson Centre. The Chancellor noted that although the services provided by Johannes Mihkelson Centre play an important role in helping asylum seekers to adapt and in assisting and supporting them, the administrative authority in its activities must comply with the requirements established by law. The Chancellor considered it possible that a contact person in Johannes Mihkelson Centre is notified about the arrival of a new asylum seeker with the consent of the asylum seeker and taking into consideration the conditions under § 12 of the Personal Data Protection Act.

The PBGB replied that personal data of an asylum seeker are transferred to Johannes Mihkelson Centre only with the consent of the asylum seeker. In reply to the Chancellor’s enquiry about the implementation

of the recommendations, the PBGB noted that the PBGB no longer notifies Johannes Mihkelson Centre about the arrival of new asylum seekers. The contacts of the Centre are posted on the information board in the common room of the accommodation facility for asylum seekers, and during interviews with the asylum seekers officials also inform them about the possibility to have a contact person from the Centre. However, Johannes Mihkelson Centre does not provide services to persons staying in the expulsion centre. Fourth, the issue of how asylum seekers can preserve in the accommodation facility the food which they have bought arose during the inspection.

No catering of asylum seekers takes places in the accommodation facility but they can purchase food at a shop or in a catering establishment. Thus, asylum seekers have to buy food to bring with them to the premises and this, in turn, brings along the need to preserve the food. Therefore, the Chancellor recommended enabling asylum seekers to use a refrigerator in the accommodation facility.

The PBGB replied that asylum seekers can use a refrigerator in the accommodation facility.

## VI. DEFENCE FORCES

### 1. General outline

During the reporting period, there were nine units of the Defence Forces in Estonia where persons were performing their conscript service obligation during the periods established by the Minister of Defence. All the units where conscript service is performed fall under the supervision of the Chancellor of Justice as the national preventive mechanism.

During the reporting period, the Chancellor carried out four inspection visits to units of the Defence Forces: on 28 April 2010 to the Headquarters and Signal Battalion (Inspection visit to the Headquarters and Signal Battalion, case No 7-7/100921), on 1 June 2010 to the Mine Countermeasures (MCM) Squadron (Inspection visit to the MCM Squadron, case No 7-7/100564), on 3 September 2010 to the Pioneer Battalion (Inspection visit to the Pioneer Battalion, case No 7-7/101156) and on 13 October 2010 to the Air Defence Battalion (Inspection visit to the Air Defence Battalion, case No 7-7/101412). All the inspection visits were announced visits, i.e. carried out with an advance notice. No experts were involved in the visits.

The Chancellor's choice of the inspected establishments was based first and foremost on the need to conduct an inspection visit at least once every three years to all the units of the Defence Forces dealing with conscript training. The Chancellor scheduled the inspection visits to take place around the time when new conscripts first arrived in the units.

In the course of inspection visits during the reporting year, the Chancellor did not find any general or recurring problems (i.e. problems occurring in all the units).

### 2. Headquarters and Signal Battalion

The Chancellor's first inspection visit was to the Headquarters and Signal Battalion, which is a unit subordinate to the Commander of the Defence Forces.

During the inspection of the unit, the Chancellor examined different personnel documents (including disciplinary proceedings documents).

The analysis of the documents showed that disciplinary proceedings in the unit were carried out in compliance with the requirements of the legislation and evidence was collected to the extent necessary for making reasoned decisions.

However, the Chancellor pointed out that even though under clause 191 of the Government Regulation No 388 of 17 December 1999 "Disciplinary regulations of the Defence Forces" the persons conducting a disciplinary investigation may request the person under investigation to provide explanation of the circumstances of disciplinary offences, and refusal to provide the explanation without good reason or knowingly providing false information is subject to disciplinary punishment, the unit should consider not obliging the persons under investigation to provide statements. This would be primarily due to the fact that according to the Chancellor's assessment clause 191 of the regulations, to the extent that it allows obliging persons under investigation to provide statements and punishing them in case of refusal or provision of false information, is in conflict with the Constitution.

The Chancellor also submitted a request for information to the Minister of Defence to obtain information for assessing the legality of clause 191 of the disciplinary regulations of the Defence Forces. In his request, the Chancellor also presented a preliminary assessment of this provision, noting that it may be in conflict with the prohibition under § 22(3) of the Constitution to compel a person to testify against himself or herself or against those closest to him or her.

The Minister of Defence in his reply agreed with the Chancellor's opinion that clause 191 of the disciplinary regulations may be contrary to the Estonian Constitution. The Minister explained that the Draft

Defence Forces Service Act, which will also include a part on disciplinary liability and disciplinary proceedings and will thus lead to annulment of the Government Regulation No 388 of 17 December 1999 on “Disciplinary regulations of the Defence Forces”, will also take into account the requirements of § 22(3) of the Constitution.

### **3. MCM Squadron**

The Chancellor’s second inspection visit was to the MCM Squadron which is a navy unit and the commander of the unit is directly subordinate to the Commander of the Navy.

The inspection did not reveal any shortcomings in the work of the unit.

### **4. Pioneer Battalion**

The Chancellor’s third inspection visit was to the Pioneer Battalion which is an army unit within the North-East Defence District.

As a result of the inspection, the Chancellor made two recommendations to the battalion commander.

It was found that there had been incidents where conscripts in the Pioneer Battalion were told to deposit their mobile phones against signature. The Chancellor found that the current regulation did not allow requiring conscripts to deposit their mobile phones. The Chancellor explained additionally that should a conscript violate the rules for the use of a mobile phone (e.g. by using it outside the free time) this may constitute a disciplinary offence in the meaning of § 8(1) of the Disciplinary Measures in the Defence Forces Act and such situations should be resolved by using relevant lawful measures.

The Chancellor recommended to the unit not to require depositing of mobile phones by conscripts in the future.

The commander of the North-East Defence District in his reply explained that an amendment in the internal regulations of the units of the defence district was made, so that “[...] in case conscripts violate the rules for the use mobile phones and electronic equipment they would be subject to disciplinary punishment. Conscripts will no longer be required to deposit their mobile phones.”

Another problem pointed out by the Chancellor concerned the fact that under the internal regulations of the North-East Defence District during the basic military training course the conscripts may not keep audio equipment (CD or MP3 players, CD/radio sets, etc) or any other household electronic equipment in the barracks.

The Chancellor drew the attention of the unit to the fact that although it may be necessary for better military training that conscripts are subjected to stricter requirements during the basic military training course than after it (e.g. in order to allow for quicker adaptation in the new environment, to develop obedience, strengthen military discipline, etc), the current statutory regulation does not allow to distinguish between the possession and use of electronic equipment in such a manner.

The commander of the North-East Defence District in his reply explained that in the future conscripts would also be allowed to use personal electronic equipment during the basic military training course.

### **5. Air Defence Battalion**

The Chancellor’s fourth inspection visit was to the Air Defence Battalion which is an army unit within the North-East Defence District.

The Chancellor made one recommendation as a result of the inspection.

It was found that under the internal regulations of the North-East Defence District sick conscripts could not apply for a leave pass. The Chancellor recommended to amend the wording of the regulations, so as to make it possible to decide whether the health condition of a sick conscript enables them to use a leave pass or not. In other words, to ensure better compliance with fundamental rights and freedoms of the conscripts, the Chancellor recommended amending the legal regulation so that a decision whether to grant a leave pass to a sick conscript would be made upon consideration of the specific circumstances.

The internal regulations appended to the reply by the commander of the North-East Defence District included the relevant amendment.

## VII. PRISONS

### 1. General outline

At the end of 2010, Estonia had five prisons, all of them within the area of government of the Ministry of Justice. For a long time, Harku Prison (since 15 January 2011 merged Harku and Murru Prison) was used only for female prisoners. After the relevant reorganisation and reconstruction, elderly male prisoners were also placed there at the beginning of 2010.

On 20 May 2010, the Chancellor made a comprehensive announced inspection visit to Harku Prison ([Inspection visit to Harku Prison, case No 7-7/100558](#)). In connection with high summer temperatures, a visit to assess the conditions in the exercise yard in the department with locked cells and punishment cells of Harku Prison was conducted. In addition, restraint beds used in Viru Prison were inspected and, as a follow-up inspection to the visit conducted at the end of 2008, the conditions in the reinforced supervision department of Viru Prison were assessed.

In his annual action plan, the Chancellor of Justice plans inspection visits to prisons at intervals which enable making a comprehensive visit to each prison at least once every three years (desirably even more often). In addition, daily information about the situation in prisons is collected on the basis of complaints received by the Chancellor and, if necessary, a particular prison may be visited more frequently.

Harku Prison was chosen first and foremost due to the fact that after the placement of male prisoners in a prison which for a long time had operated as a women's prison the organisation of work and the use of rooms in the prison changed significantly. Thus, it was necessary to verify the situation in Harku Prison after the considerable changes. Also, almost three years had passed from the Chancellor's previous inspection visit to Harku Prison on 6 February 2007.

The incentive to assess the conditions in the exercise yard of Harku Prison during the summer period with high temperatures arose from complaints submitted by prisoners. The restraint beds in Viru Prison were inspected in connection with a previously raised issue concerning the admissibility of the use of restraint beds.

Two main problems may be highlighted on the basis of inspection visits made in 2010. First, prisons are still using some of the buildings from the Soviet era which are unsuitable for modern execution of punishment (Harku, Tallinn and Murru Prison). Extensive reorganisation in the prison system has caused some problems with living conditions. For example, the Chancellor found that after the transfer of male prisoners to Harku Prison and the reconstruction work to ensure separation of male and female prisoners the possibilities for female prisoners to take care of their personal hygiene and drying the laundry were reduced significantly.

Another important problem for detained persons is the availability of information necessary for the protection of their rights in a language understood by them. As a result of the Chancellor's systematic work, the main legislation necessary for persons detained in prisons is now available in the state language as well as in the more widely spoken foreign languages (Russian). The possibilities for access to court judgments and databases of legislation in the Internet have also improved.

The following part contains a brief overview of other shortcomings not mentioned above but found during the inspection visit to Harku Prison.

### 2. Harku Prison

Harku Prison is an institution within the area of government of the Ministry of Justice which carries out imprisonment. Harku Prison is a closed prison with 220 places. Harku Prison is used for detention of female prisoners and, since 1 January 2010, also male prisoners above the age of 57 who have not been punished for commission of sexual offences.

The inspection visit to Harku Prison focused on the possibilities for the protection of the rights of prisoners mentioned above, as well as living conditions in the prison. Special attention was also given to ensuring communication of prisoners with persons outside the prison, provision of health services and the situation of children in the department for mothers and children.

Two paediatricians were involved in the inspection visit as experts for assessing the situation in the department for mothers and children. They verified, on the basis of interviews with mothers and medical staff and examining health files of children, the environment for children in the department (including nutrition), adequacy and sufficiency of health services for children, as well as the health and development of children (including psychological development).

In conclusion, the experts were of the opinion that the growing-up environment for children in the department for mothers and children was satisfactory. Children are ensured adequate health examination and good medical care both in case of acute illnesses and chronic diseases. As a shortcoming, the experts pointed out the limited communication environment for children, absence of counselling by a child psychologist (or psychiatrist in case of necessity) and limited time that children can spend outdoors. The experts made several proposals to the prison for eliminating these shortcomings.

When conducting a tour of the prison, advisers to the Chancellor discovered that there were holes (probably caused by installation of wires) in the corners of the ceiling of the room used for prisoners' visits with persons listed in § 26 of the Imprisonment Act. In order to ensure the right of communication of prisoners and persons listed in § 26 of the Imprisonment Act without the possibility of overhearing by third persons, the Chancellor recommended carrying out necessary repairs in the room.

In connection with communication with persons outside the prison, the Chancellor considered the practice of Harku Prison according to which long-term visits were also allowed during weekends to be right and justified. It was also welcome that, as a rule, both long-term and short-term visits could be obtained more frequently and for a longer duration (e.g. when children were coming for a visit or when a visitor arrived from abroad) than the minimum prescribed by current legislation.

In reply to the Chancellor's recommendations, the director of Harku and Murru Prison noted that in September 2010 an additional shower room was completed in the industrial building of the prison. This makes it possible for prisoners who do not work or engage in sports also to have access to the shower more often than once a week if necessary and with approval of the duty officer. The director added that the necessary repairs in the room for visits between prisoners and persons listed in § 26 of the Imprisonment Act were carried out in February 2011.

The director of Harku and Murru Prison also informed the Chancellor that the prison had examined and would take into account the opinions and recommendations of the experts concerning the situation of children in the department for mothers and children. In December 2010, children staying in the department for mothers and children attended the Christmas party organised in Harku kindergarten for children not enrolled in the kindergarten, and in the period from 6 to 27 January to 2011 the children several times visited the playroom in Tallinn. Since February 2011, one child in the department attends kindergarten twice a week.

## VIII. PROVIDERS OF INVOLUNTARY EMERGENCY PSYCHIATRIC CARE AND COERCIVE TREATMENT

### 1. General outline

In 2010, the Chancellor of Justice visited seven health care providers applying involuntary treatment of persons: psychiatric clinic of Tartu University Hospital Foundation ([Inspection visit to the psychiatric clinic of Tartu University Hospital, case No 7-9/100203](#)), psychiatric clinic of Viljandi Hospital Foundation ([Inspection visit to Jämejala psychiatric clinic of Viljandi Hospital Foundation, case No 7-9/100537](#)), psychiatric department of Lääne County Hospital Foundation ([Inspection visit to the psychiatric department of Lääne County Hospital Foundation, case No 7-9/101095](#)), department No 5 of the psychiatric clinic of the North-Estonian Regional Hospital Foundation ([Inspection visit to department No 5 of the psychiatric clinic of the North-Estonian Regional Hospital Foundation, case No 7-9/101070](#)), psychiatric department of Rapla County Hospital Foundation ([Inspection visit to the psychiatric department of Rapla County Hospital, case No 7-9/101220](#)), psychiatric clinic of Pärnu Hospital Foundation ([Inspection visit to Pärnu Hospital, case No 7-9/101750](#)), and psychiatric department of Narva Hospital Foundation ([Inspection visit to the psychiatric department of Narva Hospital Foundation, case No 7-9/101714](#)).

Three of the inspection visits were announced and four unannounced. In two inspections, experts (psychiatrist, child psychiatrist, general practitioner, patient representative) were also involved in addition to officials. Six of the inspected establishments provide involuntary treatment under the procedure and bases established in Chapter 3 of the Mental Health Act, and one establishment provides coercive treatment under the procedure and bases established in § 86 of the Penal Code and Chapter 16 of the Code of Criminal Procedure.

The choice of the inspected establishments was based first and foremost on the needs to carry out follow-up inspection of the implementation of the recommendations made by the Chancellor as a result of his previous visits to the same establishments. The Chancellor also wanted to pay special attention to the practice of applying means of restraint by providers of health services.<sup>23</sup> On this basis, unannounced visits to the establishments were also organised late in the evening and early morning when the number of staff in the establishments is smaller and thus the risk of restricting the freedom of patients for purposes other than treatment is higher.

Regardless of the fact that the inspected establishments were different by the profile of services provided, the number of patient places, as well as the infrastructure, some general issues can be highlighted which were common for most service providers.

Thus, for example, unfortunately there are still shortcomings in informing the patients about their rights during the treatment, as well as about the procedure for submitting complaints and other feedback, and available external complaint mechanisms. Homepages of several service providers lacked information on the results of patient satisfaction surveys.<sup>24</sup> In addition, despite the Chancellor's previous recommendations and the instructions for compliance issued by the Health Care Board within the project for the verification of the use of means of restraint carried out in 2010, the majority of the inspected psychiatric care providers had not created a proper register of the use of means of restraint,<sup>25</sup> and the rooms used for applying means of restraint did not always conform to the requirements<sup>26</sup>. Larger service providers have concluded contracts for the provision of personal protection services with private security companies. Despite the fact

23 In addition to the regulation of the use of means of restraint in § 14 of the Mental Health Act, the Health Care Board has drawn up guidance material "The procedure for applying means of restraint during the provision of in-patient psychiatric care" for psychiatric care providers.

24 Under § 6(6) of the Minister of Social Affairs Regulation No 128 of 15 December 2004 "Requirements for the provision of health services", the providers of health services must draw up a summary, analysis and discussion of patient satisfaction surveys and complaints together with the recording of the results at least once a year. The results of the patient satisfaction analysis are made public at the place of business of the health service provider or on the website in case the provider has a website.

25 16th general report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2006) 35), para 37. Available online: <http://www.cpt.coe.int/en/annual/rep-16.pdf>. See also the Health Care Board guidance material "The procedure for applying means of restraint during the provision of in-patient psychiatric care" clause 5.13.

26 Ibid, para 48 and 50.

that the contracts for the provision of security services mostly include a clause according to which security staff providing personal protection services at the providers of psychiatric care must have completed special training on the behaviour of persons with special needs, in practice many of the security staff providing the service have not completed such training.<sup>27</sup> It should also be noted that on several occasions problems with notifying people about the use of video surveillance (§ 14 of the Personal Data Protection Act) and conformity of the organisation of smoking indoors with the requirements of legislation (§ 30 of the Tobacco Act) were found.

On the basis of the inspection visits, it should be noted that unfortunately the long-standing problem of absence of the speciality of child psychiatry from the list of specialised medical care specialities has still not been resolved. Child psychiatry is defined only as a special branch of psychiatry. As child psychiatry is not an independent speciality of specialised medical care, there is no development plan, etc, for regulating the circumstances relating to the provision of this health service. The Chancellor also pointed out this fact to the Minister of Social Affairs.

The majority of the addressees of the recommendations replied to the Chancellor's above recommendations that they would take them into account in their future activities. Definitely, the main difficulty lies with reconstructing the restraint room to bring it into line with the requirements. With regard to the training of security staff, service providers have started cooperation and exchange of information about the organisation of different training possibilities for security service providers. On the initiative of the Chancellor of Justice, the Health Care Board has promised to convene a working group in 2011 with the aim to draw up harmonised and exhaustive patient information materials for the providers of psychiatric care services. The materials would also be translated into the more widely spread foreign languages and, in order to save costs, central printing of the materials is considered.

The following part contains an overview of the conclusions made by the Chancellor in the performance of his function as the national preventive mechanism in connection with the supervision of the activity of providers of in-patient psychiatric care in 2010. With regard to each service provider, specific problems characteristic for the particular establishment and not described above will be highlighted.

## **2. Psychiatric clinic of Tartu University Hospital Foundation**

On 9 March 2010, the Chancellor carried out an inspection visit to the psychiatric clinic of Tartu University Hospital Foundation. The previous inspection of the establishment took place in 2007. As a result of the inspection, the Chancellor recommended to the service provider to pay attention to the need to organise an employee job satisfaction survey and draw up and establish the procedure for visiting the patients in the clinic. In addition, on the basis of feedback from the service provider, the Chancellor recommended to the Director General of the Social Insurance Board to consider the possibility of ensuring sufficient financing of rehabilitation services needed by the patients of the psychiatric clinic of Tartu University Hospital Foundation. During the follow-up proceedings, the addressees of the recommendations informed the Chancellor that the recommendations had been taken into account or provided exhaustive explanations of the situation.

## **3. Psychiatric clinic of Viljandi Hospital Foundation**

On 4 May 2010, the Chancellor of Justice carried out an inspection visit to the psychiatric clinic of Viljandi Hospital Foundation. During the visit, the activities of the coercive treatment department and the children's department were inspected. The previous inspection of the establishment took place in 2006. As a result of the inspection, the Chancellor recommended that the service provider should remove from the general patient information and consent form an automatic request for the service recipient's consent for participation in research and development activities. It was also recommended to draw up and establish a

<sup>27</sup> 8th general report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (98) 12), para 28. Available online: <http://www.cpt.coe.int/en/annual/rep-08.htm>. See also the Council of Europe Committee of Ministers recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder, Art 32.4. Available online: <https://wcd.coe.int/ViewDoc.jsp?id=775685&BackColorInternet=999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

list of items and substances the possession of which is not advisable in the clinic (as well as other hospital units if applicable) and the procedure for the transfer, deposit and return of such items and substances. For improving the protection of the rights of children, it was recommended that treatment documentation of children admitted for voluntary treatment should include a written informed consent for the provision of health services or a doctor's written opinion that the minor is not able to express an independent will concerning the provision of health services. Also, treatment conditions corresponding to respective therapeutic indications and the possibility to stay in the accommodation room during free time should be ensured for child patients. In addition, the Chancellor also recommended that the Minister of Social Affairs and the Minister of Justice, in cooperation with the representatives of Viljandi Hospital Foundation, should discuss the concept of organisation of targeted coercive treatment, the need for additional regulation, and issues relating to cost-based funding of the service. During the follow-up proceedings, the addressees of the recommendations informed the Chancellor that his recommendations had been taken into account or provided exhaustive explanations of the situation.

#### **4. Psychiatric department of Lääne County Hospital Foundation**

On 6 July 2010, the Chancellor of Justice carried out an unannounced inspection visit to the psychiatric department of Lääne County Hospital Foundation. The previous inspection of the establishment took place in 2008. As a result of the inspection, the Chancellor recommended that the service provider should expand the range of rehabilitative and therapeutic activities offered in the department. At the time of writing this Report, closing down of the department is being considered as according to the assessment of supervisory authorities the activities of the department do not conform to the requirements for the provision of health services.

#### **5. Department No 5 of the psychiatric clinic of the North Estonian Regional Hospital Foundation**

On 9 July 2010, the Chancellor of Justice carried out an unannounced inspection visit to department No 5 of the psychiatric clinic of the North Estonian Regional Hospital Foundation. The previous inspection of the establishment took place in 2009. As a result of the inspection, the Chancellor asked the service provider to submit an overview of specific activities planned for alleviating the shortage of space along with the respective time schedules. During the follow-up proceedings, the addressee provided an exhaustive explanation of the situation.

#### **6. Psychiatric department of Rapla County Hospital Foundation**

On 26 July 2010, the Chancellor of Justice carried out an unannounced inspection visit to the psychiatric department of Rapla County Hospital Foundation. The previous inspection of the establishment took place in 2008. As a result of the inspection, the Chancellor recommended that the service provider should ensure for all persons, regardless of their ability to move, a secure and weather-protected access to possibilities for spending time in the fresh air. In addition, the Chancellor recommended ensuring a situation where recipients of the health service have provided an informed consent for intervention. In its reply the hospital informed the Chancellor that his recommendations had been implemented. On 24 March 2011, a follow-up visit to the service provider was carried out to verify compliance with the recommendations, mostly as concerns notification of patients. It was found that although the relevant procedures and guidelines had been drawn up they had not been made generally available.

#### **7. Psychiatric clinic of Pärnu Hospital Foundation**

On 12 November 2011, the Chancellor of Justice carried out an unannounced inspection visit to the psychiatric clinic of Pärnu Hospital Foundation. The previous inspection of the establishment took place in 2007. As a result of the inspection, the Chancellor recommended that the service provider should abandon the practice of requiring patients to wear hospital clothing and ensure that both the court as well as a pa-

tient's representative have a possibility to meet privately with a person to be subjected or already subjected to involuntary treatment. The time for follow-up proceedings in respect of these recommendations had not yet arrived by the time of writing this Report.

#### **8. Psychiatric department of Narva Hospital Foundation**

On 9 December 2010, the Chancellor of Justice carried out an inspection visit to the psychiatric department of Narva Hospital Foundation. The previous inspection of the establishment took place in 2007. As a result of the inspection, the Chancellor recommended that the service provider should ensure that all the documents regulating the provision of the service and the information provided to persons is also available in the official language. It was also recommended that more attention be paid to providing the activity therapy service. The service provider should remove from the internal rules of the department the information stating that the right of patients to provide an informed consent concerning the health services provided to them is restricted. The requirements for living conditions should also be complied with. In addition, the Chancellor recommended that Narva Mayor, in cooperation with the Management Board of Narva Hospital Foundation, should reach an agreement with regard to procedures needed to ensure smooth and timely application of involuntary treatment. The time for follow-up proceedings in respect of these recommendations had not yet arrived by the time of writing this Report.

## IX. PROVIDERS OF SPECIAL CARE SERVICES

### 1. General outline

During the reporting period, there were six social welfare institutions in Estonia providing 24-hour special care services to persons placed in the institution upon a court ruling and in respect of whom the right of free movement may be restricted for the period of providing the service (i.e. a person is placed in a closed department).

The Chancellor of Justice inspected three of the six of these establishments in 2010. The inspected establishments included Valkla Care Home (AS Hoolekandeteenused) ([Inspection visit to Valkla Care Home \(AS Hoolekandeteenused\), case No 7-9/100019](#)), nursing care and social welfare department of Viljandi Hospital Foundation ([Inspection visit to the nursing care and social welfare department of Viljandi Hospital Foundation, case No 7-9/100490](#)) and Võisiku Care Home (AS Hoolekandeteenused) ([Inspection visit to Võisiku Care Home \(AS Hoolekandeteenused\), case No 7-9/100683](#)).

Previously, the Chancellor had inspected Valkla Care Home in 2001. Võisiku Care Home and the nursing care and social welfare department of Viljandi Hospital Foundation had not been inspected previously.

The choice of the inspected institutions was based on the Chancellor's work plan and the need to inspect institutions which had not been inspected at all or inspected a long time ago, and to verify whether the fundamental rights and freedoms of persons are guaranteed in the institutions. Petitions received by the Chancellor from service recipients (the number of petitions as well as the problems described in them) also affected the choice of the time and place of the inspections. All the above inspection visits were carried out without an advance notice.

In comparison to previous visits, inspections carried out during the reporting period are characterised by more active involvement of experts and interviewing of service recipients and staff. In the inspection visit to the nursing care and social welfare department of Viljandi Hospital Foundation a general practitioner and a psychiatrist were involved as experts, and in the visit to Võisiku Care Home a general practitioner was involved. Experts examined the treatment documents of patients in these institutions in order to assess the conformity of general medical care and psychiatric care with the requirements. The experts did not find any violations of the requirements. However, some recommendations for improving the quality of health care were given.

One of the main problems concerning both the undertaking AS Hoolekandeteenused and Viljandi Hospital Foundation was the absence or insufficiency of a register for recording incidents or seclusion.

In the nursing care and social welfare department of Viljandi Hospital Foundation no separate register for recording the use of seclusion has been introduced. Therefore, advisers to the Chancellor could not verify the relevant information.

In Võisiku Care Home, upon examination of the register of incidents of seclusion, decisions for placement of persons in a seclusion room and the relevant case descriptions, advisers to the Chancellor found that some cases of seclusion of persons receiving the service in the care home had not been recorded in the register of seclusion.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its report on a visit to Estonia<sup>28</sup> (which took place in 2003) in paragraph 103 has said: "every instance of the physical restraint of a patient/resident (manual control, use of instruments of physical restraint, seclusion) should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff. This will greatly facilitate both the management of such incidents and the oversight of the extent of their occurrence." In paragraph 52 of its standards,<sup>29</sup> the CPT also emphasises the necessity of a register for recording incidents of restraint.

28 Available online: <http://www.cpt.coe.int/documents/est/2005-06-inf-eng.pdf>.

29 Available online page 52: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>.

According to this, patients should be entitled to attach comments to the register, and should be informed of this; at their request, they should also receive a copy of the full entry.

According to the Chancellor's assessment, the register for recording incidents of seclusion has an important role in preventing the risk of ill-treatment. The purpose of the register is to provide an overview of cases of seclusion of persons and thus ensure transparency of the practice of resorting to the use of seclusion as a measure which severely restricts the fundamental rights of persons. Besides causing problems with protecting the rights of service recipients, the absence or insufficient maintenance of a register of cases of seclusion also limits the ability of supervisory authorities to verify effectively the services provided and restrictions imposed by an institution.

With regard to these circumstances, the Chancellor has recommended to the Management Board of Viljandi Hospital Foundation to establish a register for recording incidents of seclusion conforming to the above requirement, and to the head of Võisiku Care Home to ensure proper recording of the incidents in the register. Chairman of the Board of Viljandi Hospital Foundation replied that a register for recording incidents of seclusion had been introduced in the nursing care and social welfare department. Chairman of the Board of the company AS Hoolekandeteenus replied that the staff of Võisiku Care Home had been informed of the requirements for maintaining the register, and the head of the care home would carry out a follow-up verification of the proper maintenance of the register.

The following part contains brief overview of other shortcomings not mentioned above but found during inspection visits to the respective special care providers, as well as an overview of the good practice of ensuring the fundamental rights and freedoms of service recipients.

Valkla Care Home can be definitely highlighted as a positive example, as the Chancellor found no violations of the fundamental rights and freedoms of service recipients in this institution. Therefore, the overview below does not include Valkla Care Home.

## **2. Nursing care and social welfare department of Viljandi Hospital Foundation**

On 4 May 2010, advisers to the Chancellor of Justice carried out an inspection visit to the nursing care and social welfare department of Viljandi Hospital Foundation. Viljandi Hospital Foundation has been founded by the Republic of Estonia. It has five clinics, one of them the nursing care and social welfare department (hereinafter the department). The department has two units: nursing care unit and social welfare unit. The latter also provides special care services. At the time of the visit, the social welfare unit of the department of Viljandi Hospital Foundation (hereinafter the hospital) provided the assisted living service to 13 persons, daily life assistance service to 7 persons, 24-hour special care service to 12 persons with a profound multiple disability or severe, profound or permanent mental disorder with unstable remission, 24-hour special care service to 13 persons placed in the institution upon a court ruling. The department had 73 staff (35 of them in the social welfare unit).

In addition to the problem of absence of a register for recording incidents of seclusion described above, the inspection revealed that the department did not have information for service recipients about external complaint mechanisms and the possibilities for their use. The CPT in paragraph 123 of its report on a visit to Estonia has stated that "specific arrangements should exist enabling patients/residents to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment." The Chancellor found that it is important to establish in a document, in addition to the rights and duties of service recipients and possible in-house complaint mechanisms, also external complaint mechanisms and the possibilities for their use. This document (or information material) should be made available for each service recipient and, where applicable, to their legal representative, regardless of whether the persons request the information or not.

The Chancellor recommended that the Management Board of Viljandi Hospital Foundation should establish in a document the right of service recipients to have recourse to the relevant institutions (the Social Insurance Board, the Health Care Board, the Chancellor of Justice, the court). This document and a list of additional competent bodies (along with their contact details) dealing with complaints from individuals

should be made available on the information boards of the hospital and given to each service recipient and, where applicable, to their representative, in a language understood by them. If necessary, the service provider should additionally explain the content of the document.

Chairman of the Board of Viljandi Hospital Foundation informed the Chancellor that a new procedure for complaints and information on possibilities of recourse to external complaint mechanisms outside the institution has been posted on the information board of the department, and a locked box for submitting proposals and complaints has been placed in the corridor of the department.

The inspection revealed that in addition to the full text of internal rules of the department, a simplified version of the rules had been made available for service recipients on the information boards in the department. When a person entitled to receive the service arrives in the institution, they are given the text with internal rules or a simplified version of the rules of the department depending on their ability to understand written documents. The information on the internal rules drawn up by the department is presented in simple and clear language to ensure understanding of the information by service recipients.

The Chancellor found that the information material prepared by the department is a positive example of how internal rules can be clearly explained to service recipients by taking into account their age and level of development. The Chancellor believes that all the social welfare institutions should follow a similar practice.

### 3. Võisiku Care Home (AS Hoolekandeteenused)

On 8 June 2010, advisers to the Chancellor of Justice carried out an inspection visit to Võisiku Care Home (hereinafter the care home). The care home is within the area of administration of AS Hoolekandeteenused. The sole shareholder of AS Hoolekandeteenused is the Ministry of Social Affairs. At the time of the visit, the care home provided the daily life assistance service to 38 persons, employment support service to 20 persons, assisted living service to 50 persons, 24-hour special care service to 283 persons, 24-hour special care service to 40 persons placed in the institution upon a court ruling, and 24-hour special care service to 30 persons with a profound multiple disability. The care home had 144 staff, and the administrative units servicing the care home had 24 staff.

In addition to the problem with proper keeping of a register for recording incidents of seclusion described above, the inspection revealed that upon seclusion of service recipients the care home had not notified the provider of emergency medical care (i.e. the ambulance service) or the police about the incident. Under § 20<sup>2</sup>(5) of the Social Welfare Act, before seclusion the provider of 24-hour special care service must notify the provider of emergency medical care or the police. Under subsection 6 of the same section, a person may be isolated from other service recipients until the arrival of the provider of emergency medical care or the police, but not for longer than three consecutive hours.<sup>30</sup>

The Chancellor recommended to the head of the care home that in the future the ambulance or the police should always be notified in case of seclusion of service recipients.

The Chairman of the Board of AS Hoolekandeteenused informed the Chancellor that the staff of the care home had been informed about this obligation and follow-up verification of compliance with the requirement would be performed by the head of the care home.

The inspection also revealed that at night the care home had a guard who was also assisting the staff with the application of seclusion measures if necessary. At the same time, guards have not received special

<sup>30</sup> The explanatory note to the Act on the Amendment of the Social Welfare Act, the Social Benefits for Disabled Persons Act and the relating Acts, the following has been noted with regard to § 20<sup>2</sup>(5) of the Social Welfare Act: "As seclusion should only be used in cases when a person is dangerous and/or in a psychosis, it is always necessary to call the police or the ambulance. If a person is dangerous to themselves or others, apparently the intervention of the police or the ambulance crew is always necessary and the person should be taken either to the police or a psychiatric hospital where they would be provided, if necessary, psychiatric care in accordance with the procedure under the Mental Health Act."

training to deal with persons with mental disorders. The CPT in its 8th general report<sup>31</sup> has considered it important that all persons working in closed institutions (including health-care staff, auxiliary staff, as well as guards and other persons) should receive appropriate training as well as subsequent in-service training on guaranteeing the fundamental rights and freedoms of individuals. According to paragraph 28 of the report, bearing in mind the challenging nature of their work, it is of crucial importance that staff of closed institutions is carefully selected and that they receive both appropriate training before taking up their duties and in-service courses. According to the Council of Europe Committee of Ministers Recommendation Rec(2004)10<sup>32</sup> Article 11.2, professional staff involved in mental health services should receive appropriate training. In particular, they should receive training on: 1) protecting the dignity, human rights and fundamental freedoms of persons with mental disorder; 2) understanding, prevention and control of violence; 3) measures to avoid the use of restraint or seclusion; 4) the limited circumstances in which different methods of restraint or seclusion may be justified, taking into account the benefits and risks entailed, and the correct application of such measures.

According to the assessment of the Chancellor, if a provider of special care services considers it necessary to involve guards in the process of secluding service recipients, and in this case a guard comes into direct contact with the service recipients, the service provider should ensure that the rights of persons are guaranteed to the same extent as in a situation where the seclusion is carried out by appropriately trained staff. Thus, guards of a care home should have received training to the extent required in paragraph 28 of the CPT general report and Article 11.2 of the Council of Europe Committee of Ministers Recommendation Rec(2004)10. The Chancellor recommended to the head of the care home that appropriate training for the guards of the care home be provided.

Chairman of the Board of AS Hoolekandeteenused replied that, in order to ensure the quality of the service, the institution plans to train the staff who regularly come into direct contact with the clients.

In addition, the inspection revealed that some bedrooms in the care home did not have lockable cupboards for keeping the personal belongings of the service recipients. The necessity of lockable cupboards is also pointed out in paragraph 34 of the CPT standards, which underlines the importance of providing patients with lockable space in which they can keep their belongings because the failure to provide such a facility can impinge upon a patient's sense of security and autonomy. The CPT in paragraph 93 of its report on a visit to Estonia also criticised the absence of lockable space for storing personal belongings of residents (in Kernu Care Home) and invited the Estonian authorities to remedy this deficiency.

The Chancellor recommended to the head of the care home to ensure that all the service recipients are provided with a suitable lockable space for keeping their personal belongings.

Chairman of the Board of AS Hoolekandeteenused informed the Chancellor that at the request of service recipients the cupboards intended for keeping personal belongings would be fitted with a lock.

31 8th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (98) 12. Available online: <http://www.cpt.coe.int/en/annual/rep-08.htm> .

32 Council of Europe Committee of Ministers Recommendation Rec(2004)10. Available online: <https://wcd.coe.int/ViewDoc.jsp?id=775685&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

## X. SPECIAL SCHOOLS

After the closing of Puiatu Special School in 2009 there are two schools for children requiring special educational measures due to behavioural problems (i.e. special schools): Tapa Special School for boys and Kaagvere Special School for girls. On 4 November 2010, the Chancellor carried out an unannounced inspection visit to Kaagvere Special School (Inspection visit to Kaagvere Special School, case No 7-9/102058).

The Chancellor in his annual action plan schedules inspection visits to special schools at intervals which enable making a comprehensive visit to each special school at least once every three years (desirably even more often). In addition, the Chancellor collects information about the situation in special schools from the complaints received by the Chancellor, as well as from the media, and, if necessary, a particular special school can be visited more frequently.

The choice of the inspected institution in case of Kaagvere Special School was based first and foremost on the fact that the Chancellor had received information from various sources about a possible violation of fundamental rights of pupils at the school. The choice was also based on the consideration that more than three years had passed from the Chancellor's previous comprehensive visit to the school. The Chancellor has previously inspected Kaagvere Special School on several occasions, the latest visit took place in 2006 (Inspection visit to Kaagvere Special School, case 7-9/061391).<sup>33</sup>

Kaagvere Special School is a basic school in the area of government of the Ministry of Education and Research for girls aged 10–17 requiring special educational measures due to behavioural problems. The main objectives of the school according to its statute include the following: enable pupils requiring special educational measures due to behavioural problems to comply with the compulsory school attendance duty and acquire basic education; to develop a personality who copes with their life and work and abides by legal as well as social rules; to prevent potential violations of law by pupils.

The languages of instruction at the school are Russian and Estonian. Pupils are referred to the school on the basis of a court ruling. A request to the court is made by the juvenile committee of the child's residence. Minors may also be referred to the school by the court on the basis of a court judgment. The court may refer a pupil to Kaagvere Special School for a period of one or two years.

During the inspection of Kaagvere Special School in 2010, once again a problem was raised that special schools still have to operate in an insufficient legal environment. Kaagvere Special School also operates in the facilities not suitable for a special school. Such an environment inevitably has a negative effect on the activities and effectiveness of the school.

Several shortcomings found during the inspection were indeed due to the insufficiency of the legislation regulating the operation of the school. The Chancellor has pointed out the need to revise the legislation regulating the operation of special schools already in the summaries of his previous inspection visits<sup>34</sup> and the Minister of Education and Research has admitted the problem. Unfortunately, the situation with the legislation has not improved in comparison to the previous year. For example, there is still no functioning system for ensuring follow-up care for pupils who have left the special school. The new Juvenile Sanctions Act has also still not been adopted. The Act would create a new legal basis for bringing back to a school pupils who have departed without permission, and for the use of forced return in case of necessity. Currently, there is no legal basis for security check of pupils of a special school by school staff. Staff of a special school have the right to inspect a child's belongings in the presence of the child and remove prohibited items if found, but the school staff have no right to search the clothes a child is wearing or carry out a pat-down security check. There is still no analysis to find out how many pupils with mental retardation or mental problems are currently attending special schools or what the needs of such pupil are.

In conclusion, it could be noted that already more than two years ago the Minister of Education and Research by his order No 1570 of 19 December 2008 approved "The conceptual bases for schools for

<sup>33</sup> See the Chancellor of Justice overview of 2006, pp 114-119. Available online: [http://www.oiguskantsler.ee/public/resources/editor/File/00\\_levaade\\_2006\\_ingl\\_k\\_L\\_PLIK.pdf](http://www.oiguskantsler.ee/public/resources/editor/File/00_levaade_2006_ingl_k_L_PLIK.pdf).

<sup>34</sup> See, e.g., the summary of the Chancellor of Justice inspection visit to Tapa Special School in September 2009. Available online: [http://www.oiguskantsler.ee/public/resources/editor/File/Vaarkohtlemise\\_ennetamine/2009/Kontrollkaigud/Tapa\\_kontroll\\_igu\\_kokkuv\\_te\\_2009.pdf](http://www.oiguskantsler.ee/public/resources/editor/File/Vaarkohtlemise_ennetamine/2009/Kontrollkaigud/Tapa_kontroll_igu_kokkuv_te_2009.pdf).

children with special educational needs due to behavioural problems”. However, the legislation regulating the operation of special schools, or the daily practice in special schools, has not yet been brought in line with the principles highlighted in the concept.

The following part contains problems not pointed out above and specifically relating to the activity of Kaagvere Special School.

The inspection revealed that Kaagvere Special School did not have a seclusion room meeting the requirements established by the Minister of Social Affairs Regulation No 33 of 8 February 2002. Thus, it is not possible to apply the measure under § 6<sup>2</sup> of the Juvenile Sanctions Act to place a child in need of pacification in a seclusion room.

In view of the profile of children referred to the special school and the fact that they spend 24 hours a day on the school territory, the risk of self-injury or violence against other persons is significantly higher in special schools as compared to mainstream schools. In order to help resolve dangerous situations and allow secluding a dangerous pupil from others and pacifying them, the legislator has provided for a possibility to place a child in a safe room meeting all the health protection requirements until their pacification. The absence of a room conforming to the health protection requirements in a special school is dangerous because in case of a situation endangering the health of a child or of others it is not possible to safely isolate the child until the arrival of the ambulance. This endangers the safety of the child as well as the safety of other pupils and school staff.

In order to avoid endangering the health of children and school staff, resources for furnishing a room conforming to health protection requirements in the present building of Kaagvere Special School should be found, or an alternative plan for resolving cases endangering the life and health of children or school staff should be drawn up. It should also be taken into account that in resolving such cases the rights or children posing the danger or the right of other children and school staff to a safe school environment may not be restricted disproportionately.

On this basis, the Chancellor recommended that the Ministry of Education and Research as the operator of the school, in cooperation with the director of the school, should ensure the safety of children and staff in the school. For this, the Chancellor recommended furnishing a seclusion room conforming to all the health protection requirements in Kaagvere Special School or drawing up in writing an alternative plan on how to resolve the cases endangering the life and health of children or school staff without secluding a child who poses the danger.

As already mentioned above, Kaagvere Special School does not have a seclusion room conforming to health protection requirements. Thus, seclusion of pupils under § 6<sup>2</sup>(1) of the Juvenile Sanctions Act should not be applied in the school. At the same time, during the interviews several pupils claimed that for violations or attempts of escape they had been punished by seclusion to the stairway between the first and second floor of the school. Pupils claimed that they had spent from a few hours to several days in the stairway behind locked doors. One pupil claimed that she had stayed overnight under the stairs. For this, she had been brought a bed from her room.

The director of the school admitted that in exceptional cases pupils had been secluded in the stairway. The director justified this with the absence of a seclusion room and the need to seclude for some time a pupil who had violated the rules from the others.

Interviews with pupils revealed that locking in the stairway was used rather as a punishment for an attempt of escape or violation of order, and not as a measure for avoiding an immediate threat of self-injury or violence against others.

The legislator has not granted the special schools the right of secluding a child for purposes of punishment. Even if Kaagvere Special School had a seclusion room meeting the health protection requirements, secluding of children in it to punish for escape attempts or violation of order would not be lawful.<sup>35</sup>

<sup>35</sup> The conditions for secluding children are established in § 6<sup>2</sup>(2) of the Juvenile Sanctions Act, under which a pupil may be placed in a seclusion room if there is an immediate danger of bodily harm to themselves or violence toward other persons and verbal appealing has been insufficient.

Even more objectionable is seclusion of children for purposes of punishment in a room which is not intended for seclusion and which does not meet the health protection requirements.

On this basis, the Chancellor proposed to the director of Kaagvere Special School to stop the practice of secluding children in the stairway regardless of the purpose of such seclusion and ensure that no degrading punishments or sanctions are applied to children at the school.

The inspection also revealed that children in Kaagvere Special School were given the possibility to communicate with their close friends and relatives three times a week ten minutes at a time. The children used personal mobile phones to communicate with persons close to them. According to the girls who were interviewed, pupils who did not have a personal mobile phone could communicate with persons close to them by using the mobile phones of personal counsellors or social pedagogy teachers, but not regularly and less frequently than three times a week and less than ten minutes at a time.

The use of the telephone at the school was organised in a way that two to three children were in the same room at the time of calling and they had to make the calls in the presence of other children and sometimes also the school staff. The interviewed children were clearly disturbed by the presence of other children and staff during the phone calls and complained that they could not speak confidentially and talk about problems they had with other pupils or school staff.

In addition to the interviewed children, the director of the school also affirmed the existence of such an arrangement for phone calls. The director justified it by the fact that there were 19 children at school and they all had to be found a time slot for calling. At the same time, it was necessary to ensure that the daily schedule of the school was maintained and necessary activities carried out.

The Chancellor noted that he understood the director's wish to ensure that the daily schedule and the activities prescribed in it were implemented but such an arrangement of calling was unacceptable as it violated the right of children to the inviolability of private life and confidentiality of messages. Moreover, the presence of school staff within the hearing distance was contrary to the principle established under § 6<sup>1</sup>(4) of the Juvenile Sanctions Act, according to which the director or other staff of a school for pupils with special needs do not have the right to examine the contents of a pupil's messages forwarded by telephone. Therefore, in the future making of phone calls should be arranged in a way as to guarantee that children can talk to their close ones in privacy without the presence of other pupils and staff.

On this basis, the Chancellor proposed to the director of Kaagvere Special School to arrange children's communication with their parents and persons close to them in a way as to guarantee the right of children to the confidentiality of messages and inviolability of private life. The Chancellor recommended establishing the relevant changes also in the internal rules of the school.

The Chancellor also recommended that the director of Kaagvere Special School, in cooperation with the operator of the school, find the necessary resources to ensure that the children who do not have a personal mobile phone can regularly communicate with their parents and persons close to them. The Chancellor recommended establishing in the internal rules of the school how exactly and how often children not having a personal mobile phone can communicate with their parents and persons close to them.

The inspection also revealed that upon return from a visit to home or unauthorised departure from school, supervisory staff of Kaagvere Special School searched the personal belongings that the pupils had with them as well as the pupils themselves. The school director also admitted the search of pupils by supervisory staff and justified it with the need to ensure that prohibited items and substances are not brought to the school territory. No legal basis for the use of this measure by school staff exists.

The search of pupils and their belongings took place in the lobby by the front door of the school. In addition to the front door, four more doors open to the lobby: the door of the room of supervisory staff, the door of the cloakroom, the door of the first floor corridor, and the door of an office used by the school staff. The office also included a workplace of a male staff member. During the inspection, all the doors to the lobby, except the door of the first floor corridor, were open. According to the pupils, during the searches the door of the room used by the school staff was also often open. The pupils claimed that

during the search several of them had been asked to take off the sweatshirt and the shirt, leaving them only in underwear above waist. One pupil claimed that she had been feeling particularly awkward during the search as a male staff member had been present in the office with an open door. The director of the school did not affirm the claims of the presence of a male staff member in the office with an open door during the search, but admitted that she had not been present during all the searches.

On this basis, the Chancellor proposed to the director of Kaagvere Special School to discontinue searching of pupils without a legal basis. In case of a reasonable suspicion that a pupil is trying to bring prohibited items or substances to the school territory, the Chancellor recommended asking the assistance of the police.

The Chancellor recommended to the Minister of Education and Research to consider amendment of the Juvenile Sanctions Act, so as to give certain staff members of special schools the right to search, under certain conditions, pupils and their belongings.

During the inspection it was found that in 2009 Kaagvere Special School had drawn up the school development plan for 2009–2013. The development plan has been approved by the school staff meeting as well as the school's governing council. However, the operator of the school (i.e. the Ministry of Education and Research) had not established the procedure for approval of development plans of special schools and had not provided its assessment of the development plan drawn up by Kaagvere Special School.

Kaagvere Special School also lacked an approved development plan at the time of the inspection visit on 29 November 2006. Already then the Chancellor of Justice drew the attention of the school management and the Minister of Education and Research to this.

On this basis, the Chancellor recommended to the Minister of Education and Research to establish a procedure for approval of development plans of special schools and, in line with the procedure, provide an assessment of Kaagvere Special School development plan for 2009–2013.

The inspection also revealed that in organising the daily life of the school, the internal rules made available on the school's website were not observed. Instead, the organisation of school life was based on the new internal rules which were being drawn up but which had not yet been approved by the school's board of trustees or the school director. Children at the school were also explained the internal rules which had not yet been approved in line with the requirements of the law. At the same time, on the school's homepage, the internal rules approved by the order No 1-4/57 of the school director on 9 November 2007 had been made available for parents and other interested persons, although these rules were not used as the basis for the organisation of the school life. Such a situation did not enable pupils, staff and parents to foresee with sufficient certainty the rules to which the life in Kaagvere Special School is subjected in practice. This, in turn, could result in different solutions to similar situations and, thus, unequal treatment of persons.

According to the interviewed pupils, such a situation caused confusion both among pupils and parents, as parents had access to the approved internal rules on the school homepage while pupils were already being familiarised with the new draft rules. The absence of clear and uniform school rules also caused difficulties in the daily work of the staff. Many of the interviewed children noted that different staff members reacted differently to similar situations. According to the children, due to such different reactions they often felt that they were being treated unequally. In addition, the pupils with Russian as their mother tongue also pointed out that the new draft internal rules were available only in Estonian.

On this basis, the Chancellor recommended to the director of Kaagvere Special School to observe the currently valid internal rules in organising school life and post the valid rules for pupils in a visible place both in Estonian and Russian.

The Chancellor also recommended to the director of the school to observe the requirements of the law in establishing the new internal rules, i.e. consult with the school's board of trustees as well as the pupils' representative board prior to the adoption of the rules. In disclosing the new internal rules after their adoption the Chancellor recommended to the director to observe the requirements under § 69 of the Basic Schools and Upper Secondary Schools Act. The Chancellor also recommended to the director to make the new internal rules available in Russian.

As a result of the inspection, the Chancellor made recommendations and proposals to the director of Kaagvere Special School and the Minister of Education and Research, and also sent the summary of the inspection visit to the Minister of Justice and the Riigikogu cultural affairs committee for taking note of.

The director of Kaagvere Special School thanked the Chancellor of Justice for the recommendations and proposals and said that the Chancellor's opinions had been introduced to all the school staff and pupils, and together the best solutions for complying with the recommendations were discussed. According to the director, a written alternative plan would be drawn up on how to resolve the incidents endangering the life and health of the children or staff without secluding the child who poses the danger. The director explained that in the future making of telephone calls would be organised according to a schedule, so that each pupil is ensured 20 minutes private time twice a week for communicating by phone with their parents and persons close to them. The children who do not have a personal mobile phone would be able to use regularly the school mobile phone for this. The relevant specifications on the organisation of telephone communication would be introduced as amendments to the internal rules of the school. The director of the school agreed with the Chancellor that the current legislation does not establish the right of the staff of special schools to search pupils. According to the director, in the future the assistance of the police would be asked in case of a reasonable suspicion that a pupil is trying to bring prohibited substances or items to the school.

The Minister of Education and Research also thanked the Chancellor of Justice for the recommendations and proposals and provided an overview of the Ministry's different steps for improving the organisation of activities of special schools. Inter alia, the Minister promised that in 2011 the new draft Juvenile Sanctions Act would be drawn up.

## **XI. PROVIDERS OF REHABILITATION SERVICES TO CHILDREN WITH ADDICTION PROBLEMS**

### **1. General outline**

Currently Estonia has still no legal regulation establishing the content of rehabilitation services for children with addiction problems or the requirements for the providers of such services. Nonetheless, some local authorities have created establishments providing a rehabilitation service to children with addiction problems. According to the information available to the Chancellor of Justice, there are currently two such rehabilitation establishments in Estonia: one in Tallinn and one in Jõhvi.

On 16 February 2010, the Chancellor carried out an own-initiative unannounced inspection visit to Jõhvi Youth Treatment and Rehabilitation Centre which provides rehabilitation services for children with addiction problems (*Inspection visit to Jõhvi Youth Treatment and Rehabilitation Centre, case No 7-9/100585*). On 1 June 2010, an unannounced follow-up inspection visit was also carried out to Tallinn Children's Shelter (*Tallinna Laste Turvakeskus*) (*Inspection visit to Tallinn Children's Shelter, case No 7-8/090336*), and at the end of the year (30 December 2010) also a follow-up visit to Jõhvi Youth Treatment and Rehabilitation Centre.

The choice of Jõhvi Youth Treatment and Rehabilitation Centre as an inspected establishment was first and foremost based on the fact that the Chancellor had not inspected it before. The Chancellor wished to obtain an overview of the situation and organisation of work in all the rehabilitation establishments for children with addiction problems which are known to operate in Estonia. The aim of the follow-up visit to Tallinn Children's Shelter was to verify compliance with the recommendations made by the Chancellor as a result of his visit in 2009.

### **2. Jõhvi Youth Treatment and Rehabilitation Centre**

Jõhvi Youth Treatment and Rehabilitation Centre began operating in 2004. It is an establishment owned by the private limited company Corrigo and its main objective is to provide treatment and rehabilitation services to children with drug addiction problem aged 14–18. Exceptionally, children aged 11–14 are also admitted. The centre provides treatment and rehabilitation services on the basis of a contract for the use of national budgetary allocations concluded with the National Institute for Health Development. Thus, the service is funded from the state budget. According to the contract, children referred to Jõhvi Youth Treatment and Rehabilitation Centre must be aware of the conditions of treatment and rehabilitation and sign a written consent for stay in the centre. Then, a contract for the provision of treatment and rehabilitation services is concluded between a child's guardian and OÜ Corrigo.

The inspection visits to Jõhvi Youth Treatment and Rehabilitation Centre and the follow-up visit carried out in 2010 revealed once again that the main problem hindering the provision of the necessary rehabilitation service to children with addiction is the absence of the legal regulation.

The legislator has not established, either in the Juvenile Sanctions Act, the Social Welfare Act or any other Acts, the definition of the rehabilitation service applied in respect of minors with addiction problems under § 3(1) clause 8 of the Juvenile Sanctions Act. There are no Acts regulating the types of assistance that children referred to a provider of a rehabilitation service are entitled to receive (health services, rehabilitation services, education). There are no compulsory requirements for institutions applying the sanction prescribed under § 3(1) clause 8 of the Juvenile Sanctions Act (i.e. requirements for the rooms and staff of the rehabilitation service provider, the number of children participating in a programme or service, etc). Currently there are also still no provisions regulating whether and to what extent the institutions applying the sanction are allowed to restrict fundamental rights of children if this proves to be essential for guaranteeing the success of the rehabilitation process. There is no effective system of follow-up care for young people who have undergone the rehabilitation process. The provision of the rehabilitation service established under § 3(1) clause 8 of the Juvenile Sanctions Act is also significantly hampered by the absence of a financing model for the service.

As the state has not established any guidelines or requirements for the providers of the rehabilitation service, it is not possible to verify the quality of the rehabilitation service provided to children with addiction problems. Due to the absence of service guidelines and a supervisory mechanism no state supervision over the existing service providers has been carried out. Also, no comprehensive external assessment of the existing institutions has taken place. Thus, it is not possible to be convinced about the quality and efficiency of the service offered by the existing service providers.

The Chancellor has repeatedly drawn attention to this problem, most recently in his report No 1 to the Riigikogu, “The availability of the rehabilitation service for children with addiction problems”. At the joint meeting of the Riigikogu legal affairs committee and the social affairs committee on 10 December 2009 where the Chancellor’s report was discussed both committees asked the Ministry of Social Affairs to analyse in the first quarter of 2010 what the justified restrictions of fundamental rights in the rehabilitation of children with addiction problems could be, and draw up in the first half of 2010 draft legislation regulating the substance of the rehabilitation service and establishing the relevant financing model and submit the draft to the Riigikogu before the end of the spring session of 2010. However, the Ministry of Social Affairs had not drawn up the draft legislation regulating the provision of rehabilitation services to children with addiction problems by the end of 2010. Thus, the providers of rehabilitation services still have to operate in a non-existing legal environment.

The following part contains a brief overview of other shortcomings not mentioned above but found during the inspection visit.

The inspection revealed that Jõhvi Youth Treatment and Rehabilitation Centre is a closed establishment from which children are not allowed to leave at will. The examination of children’s files revealed that in most cases there was no child’s written consent for the stay in a closed rehabilitation establishment. The majority of children with whom the Chancellor and his advisers talked also claimed that they had not given a written informed consent to stay in the establishment for the provision of the service and for the restriction of their freedom.

The Chancellor reached the conclusion that according to the legal regulation valid at the time of the inspection visit Jõhvi Youth Treatment and Rehabilitation Centre did not have a legal basis for restricting the freedom of children against their will. Thus, a child has to give a written informed consent for receiving the rehabilitation service and restricting their freedom. An informed consent presumes that prior to giving their consent a child has been explained, taking into account the child’s age and level of development, which rules and restrictions of the rights apply in the rehabilitation centre, what is the duration of stay in the establishment and what are the conditions for living and studying in the establishment. The child should also be notified of the possibility to withdraw their consent.<sup>36</sup>

On this basis, the Chancellor recommended to the head of Jõhvi Youth Treatment and Rehabilitation Centre to ensure that all the children referred to the centre to receive the rehabilitation service are familiarised with the conditions for the stay and the rules and restrictions applicable in the centre, and based on this provide a written informed consent for stay for the provision of the service.

The Chancellor recommended to the National Institute for Health Development to verify regularly that all the children referred to the rehabilitation service provider have given their written informed consent for receiving the treatment and signed an agreement to comply with the rules and conditions applicable in the treatment and rehabilitation centre, as required by the contract for the use of national budgetary allocations concluded with Jõhvi Youth Treatment and Rehabilitation Centre.

Interviews with children as well as staff in the centre showed that the staff were inspecting the content of children’s correspondence. Children could not send letter though the Internet but could read letters sent to them. At the same time, a staff member of the centre was standing by the child and reading the letters sent to the child. The interviewed children had not sent or received many letters by post but allegedly a staff member also read letters sent on paper. An incoming letter was opened in the presence of a child, the staff member read the letter and then decided whether to give it to the child or not.

<sup>36</sup> About the informed consent, see also § 766 of the Law of Obligations Act and § 12 of the Personal Data Protection Act.

The Chancellor reached the conclusion that the activities of Jóhvi Youth Treatment and Rehabilitation Centre concerning the opening of children's personal letters, inspecting the content of the correspondence and restricting the correspondence has no legal basis. Such an activity is arbitrary and in conflict with § 43 and § 26 of the Constitution.

However, if in the interests of success of the rehabilitation process, restricting the correspondence of children proves to be essential, a separate agreement on this should be concluded with the children referred to the service and their guardians. Such an agreement may, for example, be drawn up as an appendix to the treatment agreement.

On this basis, the Chancellor recommended to the head of Jóhvi Youth Treatment and Rehabilitation Centre to discontinue restricting the right to children to the confidentiality of messages and inviolability of private life without a legal basis.

The Chancellor recommended that in case of a need a separate written agreement with children and their guardians for restricting the correspondence should be concluded.

The inspection also revealed that opportunities for spending free time and engaging in hobby activities in the rehabilitation centre were fairly limited. Many children with whom the Chancellor and his advisers talked complained about the limited opportunities to engage in hobby activities and expressed the wish to expand such opportunities. Several children also mentioned that, for example, on weekends only one instructor was present in the centre and therefore children could go outdoors only if all the children agreed to this. If some children did not wish to go outside, the others could not go either, as the instructor could not leave any children alone in the centre.

Children with addiction problems receiving a service in the rehabilitation centre are not comparable to adults by their physical or mental development and are therefore in need of assistance and support from adults for their development. Providing children with opportunities for activities corresponding to their age is extremely important for their development.

Although at the time of the inspection visit there were no legal acts regulating how many staff members per certain number of children should be present in the rehabilitation centre at any time, the number of staff in the centre at any time should be sufficient to enable ensuring the rights of children arising from international and domestic legislation.

On this basis, the Chancellor recommended to the head of Jóhvi Youth Treatment and Rehabilitation Centre to offer additional possibilities for spending free time and engaging in hobby activities for children in the centre. The Chancellor also recommended to the head of the centre to ensure that at any moment, regardless of the time or day of the week, there is a sufficient number of staff in the centre to ensure the rights of all the children staying in the centre. In addition, the Chancellor proposed to ensure that children have a daily opportunity to spend time in the fresh air.

The Chancellor recommended to the National Institute for Health Development to supervise regularly whether children in the centre can spend time every day in the fresh air and whether they have sufficient possibilities for engaging in hobby activities and spending free time.

As a result of the inspection, the Chancellor made recommendations and proposals to the head of Jóhvi Youth Treatment and Rehabilitation Centre, the National Institute for Health Development and the Minister of Education and Research, and sent the summary of the inspection visit to the Minister of Social Affairs for taking note of.

The head of Jóhvi Youth Treatment and Rehabilitation Centre replied with regard to the Chancellor's recommendations and proposals that the conditions for admission of young people to the rehabilitation service were changed, so that upon their arrival in the centre they are explained the purpose of referral to treatment and rehabilitation, the restrictions applicable in the centre, the internal rules and daily schedule of the centre, and the rights and duties of young people during the stay in the centre. A young person would sign an affirmation that they have been provided the information and also sign an informed con-

sent. According to the head of the centre, in the future an agreement would be drawn up as an appendix to the treatment and rehabilitation agreement, stating that the centre has the right to inspect a young person's communication with persons outside the centre. The young person and their guardian would sign the informed consent. According to the head of the centre, in the future all the reasons for cancelling of classes would be recorded in the relevant journal. The head of the centre also promised that the centre would guarantee the presence of at least two staff members on the premises 24 hours day.

The director of the National Institute for Health Development explained that in the future the Institute would supervise more frequently the activities of Jõhvi Youth Treatment and Rehabilitation Centre and the existence of a written informed consent by young people referred to receive the service.

The Minister of Education and Research replied that he had asked Ida-Viru County Governor to carry out state supervision of the educational activities provided in the rehabilitation centre by Jõhvi Upper Secondary School.

In a conclusion with regard to the results of state supervision, the Minister admitted that currently there was no legal regulation of the organisation of education in rehabilitation establishments for children with addiction problems. At the same time, the Minister noted that the results of the supervision performed by Ida-Viru County Administration allow for a conclusion that the organisers of educational activities in the rehabilitation centre have tried to proceed from the individuality of pupils, their state of health as well as their ability and readiness to learn, but the organisation of education does not conform to the legislation.

The Chancellor of Justice carried out a follow-up inspection visit on 30 December 2010 to verify compliance with his proposals and recommendations. The follow-up inspection revealed that Jõhvi Youth Treatment and Rehabilitation Centre had implemented almost all the proposals and recommendations made as a result of the visit of 16 February 2010. Problems still existed with finding the sufficient number of qualified staff. But the head of the centre affirmed that they were actively looking for new instructors.

### **3. Tallinn Children's Shelter**

The follow-up visit to Tallinn Children's Centre on 1 June 2010 showed that the provider of the rehabilitation service had implemented most of the proposals made by the Chancellor as a result of his visit of 5 March 2009. A few problems still existed with drawing up some documents. Specifically, contracts of some children lacked the signature of the child receiving the rehabilitation service. Also, not all the client contracts had the date of concluding the contract and the period of its validity. The Chancellor drew the attention of the head of the shelter to the above problems and the head promised to eliminate them at the first opportunity.

## **PART II**

### **STATISTICS OF PROCEEDINGS**

## 1. General outline of statistics of proceedings

### 1.1. Petition-based statistics

In 2010, the Chancellor of Justice received 2430 petitions, on the basis which 2003 cases were opened. As compared to 2009, the number of petitions dropped by 11%.

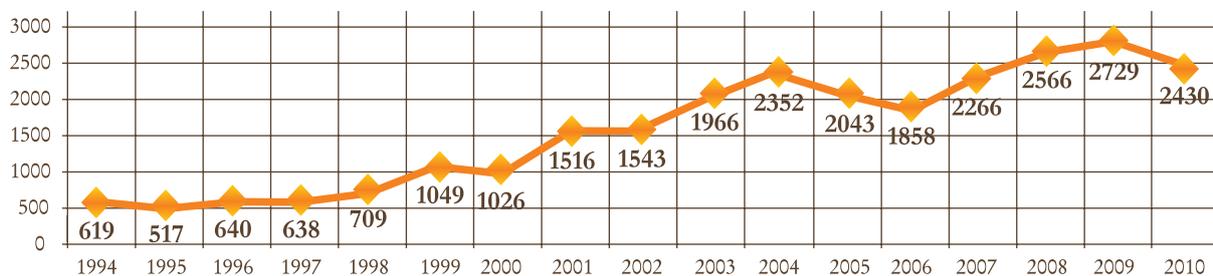


Figure 1. Number of petitions 1994–2010

### 1.2. Statistics based on cases opened

Statistics of the Office of the Chancellor of Justice are based on cases opened. A ‘case opened’ means taking procedural steps and drafting documents to resolve an issue falling within the jurisdiction of the Chancellor. Petitions that raise the same issue are joined and regarded as a single case.

The Chancellor opens a case either based on a petition or on his own initiative. Proceedings of cases are divided into substantive and non-substantive proceedings. Substantive proceedings are divided as follows based on the Chancellor’s competencies:

- review of the legality or constitutionality of legislation (i.e. review proceedings);
- verification of the legality of measures of the Government, local authorities, other public-law legal persons or of a private person, body or institution performing a public function (i.e. ombudsman proceedings);
- proceedings arising from the Chancellor of Justice Act and other Acts (i.e. special proceedings).

Resolving petitions received by the Chancellor takes place according to the principle of freedom of form and expediency of proceedings, and by taking necessary investigative measures to ensure effective and independent investigation. Outcomes of cases are divided as follows depending on the type of proceedings.

In reviewing the constitutionality and legality of legislation, the outcome of proceedings is classified according to whether a conflict was found or not.

A conflict was found if:

- + a proposal was made to bring an Act into conformity with the Constitution;
- + a proposal was made to bring a regulation into conformity with the Constitution or an Act;
- + a request was made to the Supreme Court to declare a legal act unconstitutional and invalid;
- + a report was made to the Riigikogu;
- + a memorandum was sent to executive authorities for initiating a Draft Act;
- + a memorandum was sent to executive authorities for adopting a legal act;
- + a problem was resolved by the relevant institution during the proceedings.

No conflict was found if:

- an opinion was issued stating a finding of no conflict.

In reviewing the legality of activities of bodies performing public functions, the outcome of proceedings is classified according to whether a violation was found or not.

A violation was found if:

- + a proposal was made for eliminating a violation;
- + a recommendation was made for complying with lawfulness and the principle of good administration;
- + a problem was resolved by the relevant institution during the proceedings.

No violation was found if:

- an opinion was issued stating a finding of no violation.

Special proceedings are classified depending on outcome as follows:

- o an opinion within constitutional review court proceedings;
- o a reply to an interpellation by a member of the Riigikogu;
- o a reply to a written enquiry by a member of the Riigikogu;
- o an opinion on a draft legal act;
- + a proposal to grant consent to lifting the immunity of a member of the Riigikogu and drawing up a statement of charges in respect of the member;
- an opinion to the Riigikogu on lifting the immunity of a member of the Riigikogu;
- + initiating disciplinary proceedings against a judge;
- a decision not to initiate disciplinary proceedings against a judge;
- + an agreement reached within conciliation proceedings;
- terminating or suspending conciliation proceedings due to failure to reach an agreement.

In case of petitions declined for proceedings, the outcome is classified as follows:

- o explanation given of reasons for refusal;
- o petition forwarded to other competent bodies;
- o taken note of.

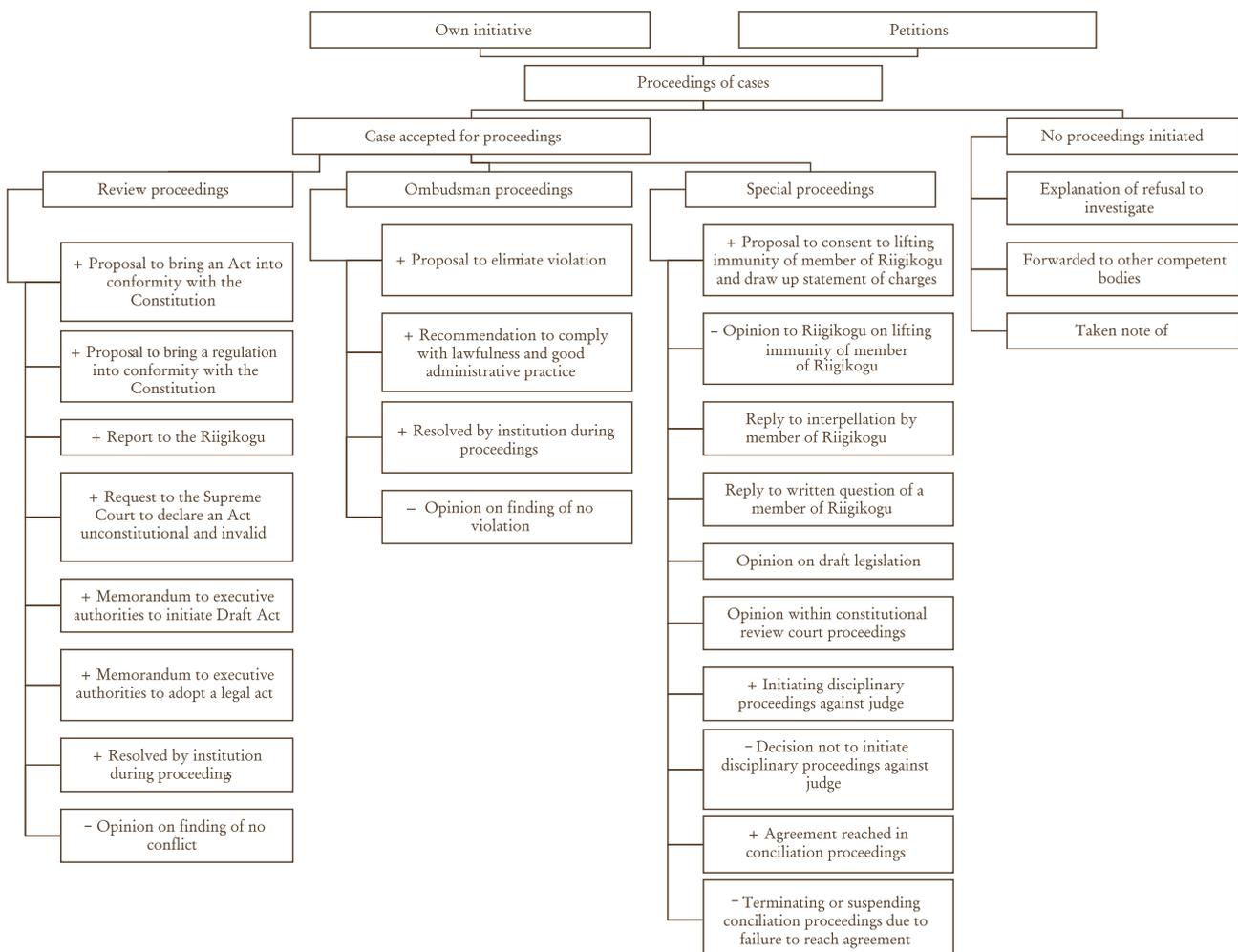


Figure 2. Classification of proceedings of cases and outcome of proceedings

During the reporting year, the Chancellor of Justice opened 2003 cases, which is 1.5% less than in 2009. As at 1 February 2010, 1868 proceedings had been completed, in 44 cases follow-up proceedings were pending and 91 cases were still being investigated. In 480 cases, substantive proceedings were conducted, and in 1523 cases no proceedings were initiated for various reasons. 75 cases were opened based on the Chancellor's own initiative, and 42 inspection visits were conducted.

If in the previous years the number of cases opened decreased on account of substantive proceedings while the number of cases where no proceedings were initiated increased, in 2010 the number of cases where substantive proceedings were initiated somewhat increased and the number of cases where no substantive proceedings were initiated decreased. In comparison to 2009, the proportion of own-initiative proceedings has slightly decreased and this has also led to a decrease in the number of inspection visits.

*Table 1. Distribution of cases by content*

	2006	2007	2008	2009	2010
Cases accepted for proceedings	551 34.6%	474 27.2%	480 24.7%	449 22.1%	480 24%
incl. review proceedings	207 13%	150 8.6%	151 7.8%	124 6.1%	168 8.4%
incl. ombudsman proceedings	258 16.2%	252 14.5%	258 13.3%	231 11.4%	214 10.7%
incl. special proceedings	86 5.4%	72 4.1%	71 3.7%	94 4.6%	98 4.9%
Non-substantive proceedings of cases	1043 65.4 %	1266 72.8%	1464 75.3%	1584 77.9%	1523 76%
Total cases	1594	1740	1944	2033	2003
incl. own-initiative proceedings	35 2.2 %	70 4%	66 3.5%	82 4%	75 3.7%
incl. inspection visits	8	28	33	49	42

## 2. Outcomes of cases opened

The outcome of cases demonstrates what kind of solutions or measures the Chancellor reached as a result of his proceedings. The number of cases opened does not exactly correspond to the number of outcomes, as only completed cases can have an outcome, while the distribution of cases by content includes all cases opened during the reporting year.

### 2.1. Review of constitutionality and legality of legislation of general application

To review the constitutionality and legality of legislation of general application, 168 cases were opened, i.e. 8.4% of the total number of cases and 35% of the total number of substantive proceedings of cases. Of these, 150 were opened on the basis of petitions and 18 on own initiative.

Within constitutional review proceedings the following were scrutinised:

- conformity of Acts with the Constitution (103 proceedings, of these 91 based on petitions by individuals and 12 on own initiative);
- conformity of Government regulations with the Constitution and Acts (8 proceedings, of these 7 based on petitions by individuals and 1 on own initiative);

- conformity of regulations of Ministers with the Constitution and Acts (17 proceedings, of these 14 based on petitions by individuals and 3 own initiative);
- conformity of regulations of local councils and rural municipality and city administrations with the Constitution and Acts (39 proceedings, of which 1 based on application by County Governor and 36 based on petitions by individuals and 2 on own initiative);

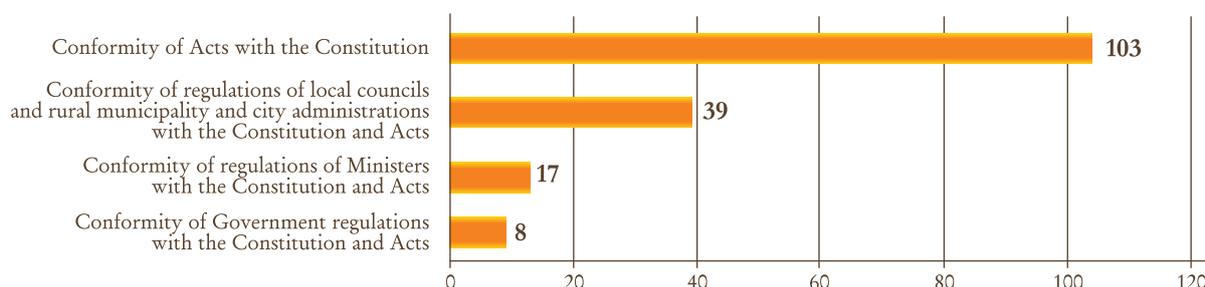


Figure 3. Distribution of constitutional review proceedings

As a result of review of the constitutionality and legality of legislation of general application, the Chancellor reached the following outcomes:

- proposal to bring an Act into conformity with the Constitution (1);
- proposal to bring a regulation into conformity with the Constitution or an Act (3);
- request to the Supreme Court for declaring legislation of general application unconstitutional and invalid (4);
- report to the Riigikogu (1);
- memorandum to executive authorities for initiating a Draft Act (10);
- memorandum to executive authorities for adopting a legal act (8);
- case resolved by the institution during proceedings (10);
- opinion stating a finding of no conflict (64).

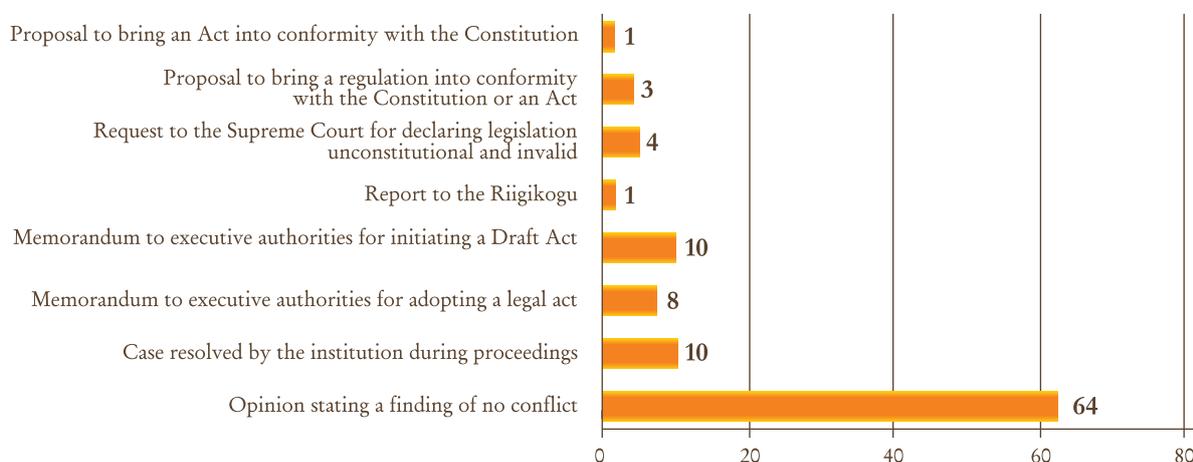


Figure 4. Outcomes of cases opened for review of conformity with the Constitution and Acts

In case of proceedings for review of conformity with the Constitution and Acts, conflict with the Constitution or an Act was found in 22% of the cases. In 2009, the indicator was 24%. In comparison to 2009, there was a decrease in the number of proceedings where the conflict was resolved by the respondent institution in the course of the proceedings.

## 2.2. Verification of lawfulness of activities of agencies and institutions performing public functions

214 proceedings were initiated for verification of legality of measures of the state, local authorities, other public-law legal persons or of a private person, body or institution performing a public function, i.e. 10.7% of the cases opened and 44.6% of the total number of substantive proceedings. Of these, 157 were based on petitions by individuals and 57 on own initiative.

In proceedings initiated to verify the activities of agencies and institutions performing public functions, the following were scrutinised:

- activities of a state agency or body (136 proceedings, of these 106 based on petitions by individuals and 30 on own initiative);
- activities of a local government body or agency (51 proceedings, of these 40 based on petitions and 11 on own initiative);
- activities of a body or agency of a legal person in public law, or of a body or agency of a private person performing state functions (27 proceedings, of these 11 based on petitions and 16 on own initiative).

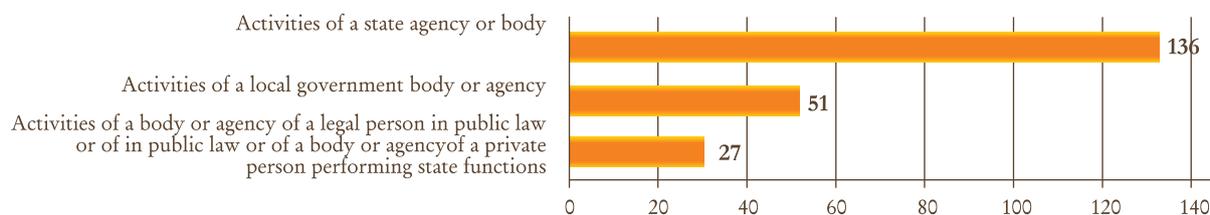


Figure 5. Distribution of cases opened for scrutiny of activities of persons, agencies, and bodies

Outcomes of supervision of activities of agencies and institutions performing public functions:

- proposal to eliminate a violation (7);
- recommendation to comply with lawfulness and good administrative practice (58);
- resolved by the institution during the proceedings (27);
- opinion stating a finding of no violation (90).

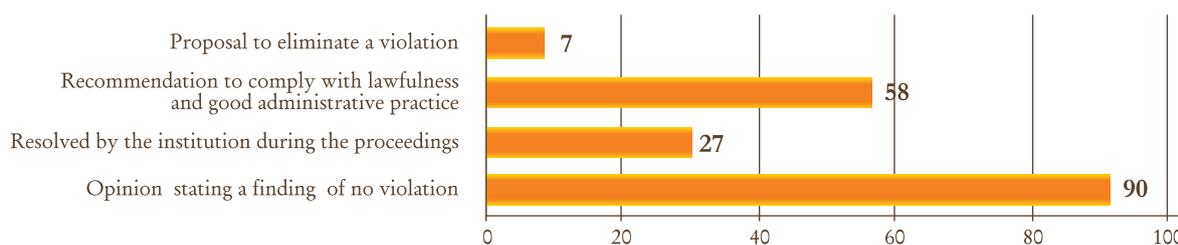


Figure 6. Outcomes of cases opened for scrutiny of activities of persons, agencies, and bodies

In proceedings initiated for scrutiny of activities of persons, agencies and bodies, a violation of the principles of good administration and lawfulness was found in 30.4% of the cases. In 2009, the indicator was 42%.

### 2.3. Special proceedings

There were 98 special proceedings during the reporting year, i.e. 4.9% of the total number of cases opened and 20.4% of the total number of substantive proceedings, which is more or less the same as in 2009.

Special proceedings are divided as follows:

- providing an opinion on a legal act within constitutional review proceedings (15 proceedings);
- replying to interpellations by members of the Riigikogu (3 proceedings);
- replying to written questions by members of the Riigikogu (3 proceedings);
- initiating disciplinary proceedings against judges and other proceedings relating to the activities of courts (30 proceedings);
- conciliation proceedings to resolve discrimination disputes between private individuals (1 proceeding);
- opinions on draft legal acts and documents (21 proceedings);
- other activities arising from law (25 proceedings).

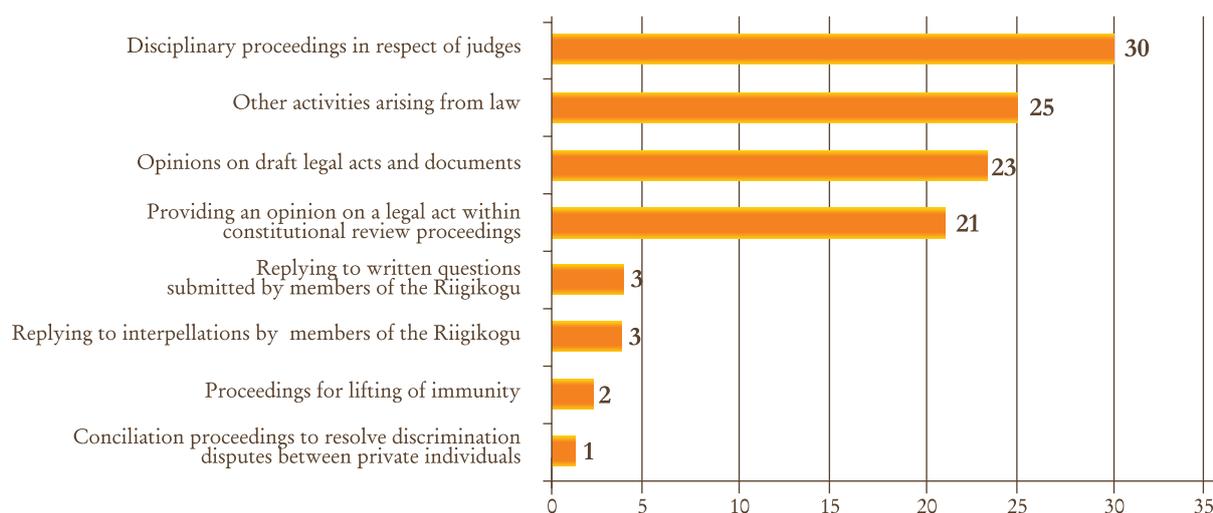


Figure 7. Distribution of special proceedings

The largest number of special proceedings, i.e. 30.6%, were related to initiating disciplinary proceedings against judges and other proceedings relating to the activities of courts.

One conciliation proceeding for resolving a discrimination dispute between private individuals was initiated during the reporting year, but it was interrupted due to unwillingness of the parties to participate in conciliation proceedings.

In 2010, there was a 36% increase in the number of cases for initiating disciplinary proceedings against judges and other proceedings relating to the activities of courts.<sup>37</sup> Unlike in 2008 and 2009, the Chancellor had to take disciplinary charges to the Supreme Court on his own initiative in 2010. In addition, the Chancellor made five recommendations to the courts for improving the work of the courts, one memorandum for amending legal regulation, and one circular to the courts.

#### 2.4. Cases not accepted for proceedings

The Chancellor of Justice does not initiate substantive proceedings with regard to a petition if its resolution is not within his competence. In that case, the Chancellor explains to the petitioner which institution should deal with the issue. The Chancellor can also reject a petition if it is clearly unfounded or if it is not clear from the petition what constituted the alleged violation of the petitioner's rights or principles of good administration.

The Chancellor is not competent to intervene if a court judgment has been made in the matter of the petition, the matter is concurrently subject to judicial proceedings or pre-trial complaint proceedings (e.g. when a complaint is being reviewed by an individual labour dispute settlement committee or similar pre-judicial body). The Chancellor cannot, and is not permitted to duplicate these proceedings, as the possibility of filing a petition with the Chancellor of Justice is not considered to be a legal remedy. Rather, the Chancellor of Justice is a petition body, with no direct possibility to use any means of enforcement. The Chancellor resolves cases of violation of people's rights if the individual cannot use any other legal remedies. In cases when a person can file an administrative challenge or use other legal remedies or if administrative challenge proceedings or other non-compulsory pre-trial proceedings are pending, the Chancellor's decision is based on the right of discretion, which takes into account the circumstances of each particular case.

The Chancellor may also decide not to initiate proceedings with regard to a petition if it was filed more than one year after the date on which the person became, or should have become, aware of violation of their rights. Applying the one-year deadline is in the discretion of the Chancellor and depends on the

<sup>37</sup> Since 2010, the Office of the Chancellor of Justice changed the methodology for collecting statistics of cases concerning the activities of courts and judges. Previously, special proceedings included only proceedings relating to the activities of judges, but since 2010 the proceedings relating to other activities of the courts are also included. The change in methodology also resulted in the increase of the number of respective cases.

circumstances of the case – for example, severity of the violation, its consequences, whether it affected the rights or duties of third parties, etc.

In 2010, the Chancellor declined to open substantive proceedings in 1523 cases, which makes up 76% of the total number of cases.

Proceedings were not opened for the following reasons:

- the individual could file an administrative challenge or use other legal remedies (622 cases);
- lack of competence by the Chancellor (524 cases);
- judicial proceedings or compulsory pre-trial proceedings were pending in the matter (168 cases);
- petition did not comply with requirements under the Chancellor of Justice Act (126 cases)
- a petition was manifestly unfounded (68 cases);
- the petition had been filed one year after the petitioner discovered the violation (11 cases);
- administrative challenge proceedings or other voluntary pre-trial proceedings were pending (4 cases).

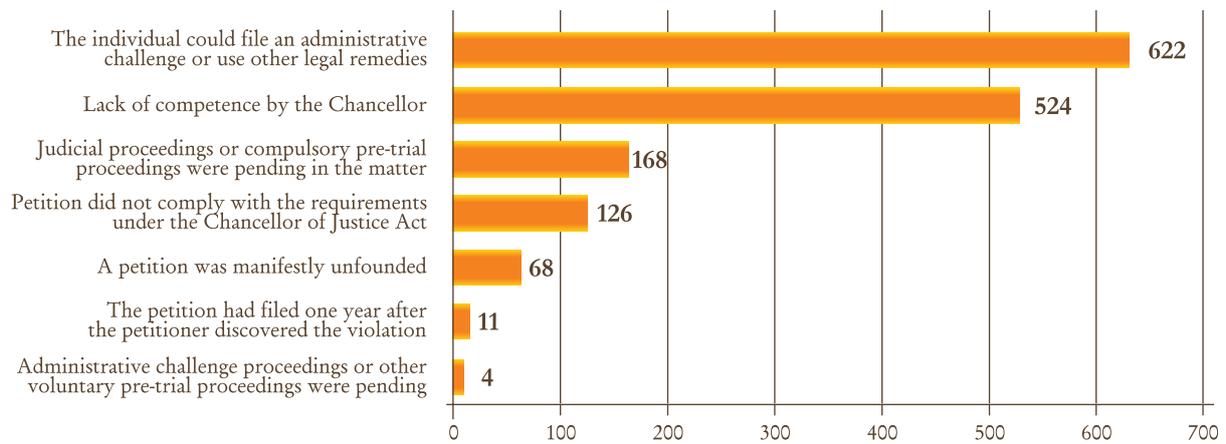


Figure 8. Reasons for declining to initiate proceedings of petitions

In case of petitions declined for proceedings, the competence of the Chancellor, Acts and other legislation were explained to the petitioners. The steps taken on the basis of petitions in 2010 could be divided as follows:

- an explanatory reply was given (1348 cases);
- a petition was forwarded to competent bodies (122 cases);
- a petition was taken note of (67 cases).

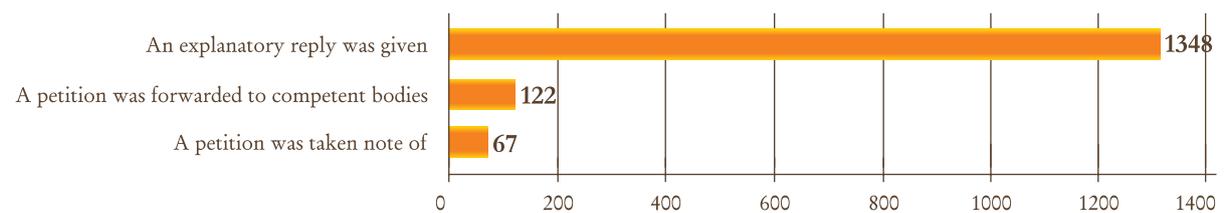


Figure 9. Distribution of replies in case of declining to accept a petition for proceedings

Similarly to the previous years, the main reasons for declining to initiate proceedings were the possibility to use other legal remedies and lack of competence by the Chancellor. In comparison to 2009, the number of unfounded petitions has dropped. The number of petitions forwarded to competent authorities was more or less the same as in 2009.

### 3. Distribution of cases by area of responsibility

By types of respondents, proceedings of cases were divided as follows:

- the state (1456 cases);
- local authorities (294 cases);
- a legal person in private law (171 cases);
- a natural person (42 cases).
- a legal person in public law, except local authorities (22 cases).

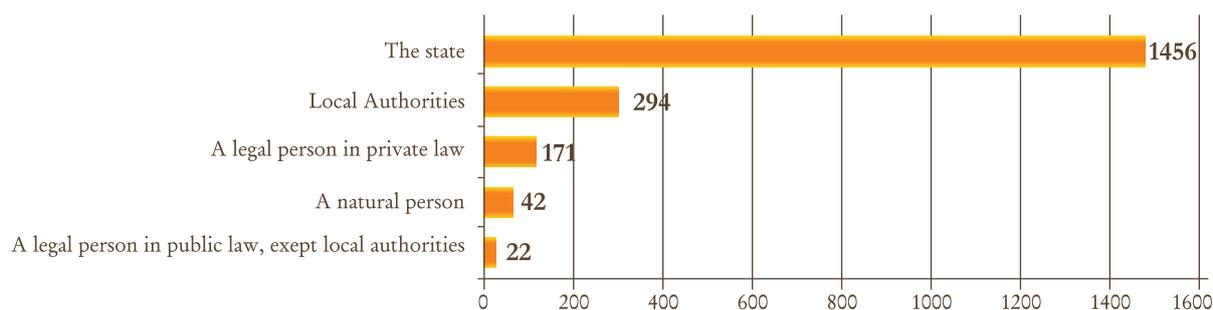


Figure 10. Distribution of cases by respondents

Distribution of cases opened in 2010 by areas of government and type of proceedings is shown in Tables 2 and 3. Proceedings are divided by areas or responsibility of government agencies and other institutions depending on who was competent to resolve the petitioned matter or against whose activities the petitioner complained<sup>38</sup>.

Table 2. Distribution of cases by respondent state or government agencies or institutions

Agency, body, person	Cases opened	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
<b>Riigikogu or the Chancellery of the Riigikogu</b>	<b>42</b>	20	1	0	22
<b>Supreme Court or other courts, except registry departments</b>	<b>236</b>	45	0	2	191
<b>National Audit Office</b>	<b>0</b>	0	0	0	0
<b>President of the Republic or Office of the President</b>	<b>3</b>	1	0	0	2
<b>Government of the Republic or Prime Minister</b>	<b>4</b>	1	0	0	3
<b>Chancellor of Justice or Chancellor's Office</b>	<b>14</b>	1	0	0	13
<b>Area of government of the Ministry of Education and Research</b>	<b>19</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>16</b>
Ministry of Education and Research	18	2	1	0	16
Agency subordinate to the Ministry of Education and Research	1	1	0	1	0
Language Inspectorate	0	0	0	0	0
<b>Area of government of the Ministry of Justice</b>	<b>659</b>	<b>98</b>	<b>1</b>	<b>6</b>	<b>561</b>
Ministry of Justice	176	55	1	0	121
Agency subordinate to the Ministry of Justice	9	3	0	0	6
Bar Association	7	2	0	0	5
Data Protection Inspectorate	5	3	0	0	2

38 Mostly constitutional review proceedings relating to Acts.

Agency, body, person	Cases opened	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
Harku Prison	15	3	0	1	12
Murru Prison	24	4	0	0	20
Tallinn Prison	69	3	0	0	66
Tartu Prison	144	9	0	2	135
Viru Prison	112	12	0	3	100
Bailiffs	56	2	0	0	54
Notaries	4	0	0	0	4
Trustees in bankruptcy	5	0	0	0	5
Prosecutor's Office	33	2	0	0	31
<b>Area of government of the Ministry of Defence</b>	<b>18</b>	<b>16</b>	<b>0</b>	<b>6</b>	<b>2</b>
Ministry of Defence	5	3	0	1	2
Agency subordinate to the Ministry of Defence	13	13	0	5	0
Defence Resources Agency	0	0	0	0	0
<b>Area of government of the Ministry of the Environment</b>	<b>41</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>21</b>
Ministry of the Environment	19	7	0	0	12
Agency subordinate to the Ministry of the Environment	2	0	0	0	2
Environmental Board	4	2	0	0	2
Environmental Inspectorate	0	0	0	0	0
Competition Board	3	1	0	0	2
Land Board	3	0	0	0	3
<b>Area of government of the Ministry of Culture</b>	<b>5</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>4</b>
Ministry of Culture	4	1	0	0	3
Agency subordinate to the Ministry of Culture	1	0	0	0	1
National Heritage Board	0	0	0	0	0
<b>Area of government of the Ministry of Economic Affairs and Communications</b>	<b>61</b>	<b>23</b>	<b>2</b>	<b>3</b>	<b>38</b>
Ministry of Economic Affairs and Communications	44	16	2	1	28

Agency, body, person	Cases opened	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
Agency subordinate to the Ministry of Economic Affairs and Communications	0	0	0	0	0
Aviation Board	1	0	0	0	1
Road Administration	7	5	0	2	2
Patent Office	0	0	0	0	0
Consumer Protection Board	8	1	0	0	7
Technical Surveillance Authority	1	1	0	0	0
Maritime Administration	0	0	0	0	0
<b>Area of government of the Ministry of Agriculture</b>	<b>9</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>5</b>
Ministry of Agriculture	5	2	0	0	3
Agency subordinate to the Ministry of Agriculture	0	0	0	0	0
Agricultural Registers and Information Board	1	0	0	0	1
Agricultural Board	0	0	0	0	0
Veterinary and Food Board	3	2	0	0	1
<b>Area of government of the Ministry of Finance</b>	<b>41</b>	<b>15</b>	<b>1</b>	<b>0</b>	<b>26</b>
Ministry of Finance	25	10	1	0	15
Agency subordinate to the Ministry of Finance	0	0	0	0	0
Tax and Customs Board	13	4	0	0	9
Public Procurement Office	2	0	0	0	2
Statistics Estonia	1	1	0	0	0
<b>Minister for Regional Affairs, county administration, or subordinate agencies</b>	<b>8</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>7</b>
<b>Area of government of the Ministry of Internal Affairs</b>	<b>165</b>	<b>51</b>	<b>8</b>	<b>14</b>	<b>114</b>
Ministry of Internal Affairs	51	25	8	2	26
Agency subordinate to the Ministry of Internal Affairs	3	0	0	0	3
Security Police Board	4	0	0	0	4
Police and Border Guard Board	106	26	0	12	80
Rescue Board	1	0	0	0	1

Agency, body, person	Cases opened	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
<b>Area of government of the Ministry of Social Affairs</b>	<b>125</b>	<b>41</b>	<b>2</b>	<b>6</b>	<b>84</b>
Ministry of Social Affairs	72	31	2	2	41
Agency subordinate to the Ministry of Social Affairs	3	1	0	0	2
Social Insurance Board	23	4	0	0	19
Health Board	17	4	0	3	13
Labour Inspectorate	8	1	0	1	7
Unemployment Insurance Fund	2	0	0	0	2
State Agency of Medicines	0	0	0	0	0
<b>Ministry of Foreign Affairs</b>	<b>7</b>	<b>7</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>State Chancellery</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Agency subordinate to the State Chancellery	0	0	0	0	0
National Archives	0	0	0	0	0
<b>National Electoral Committee</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>

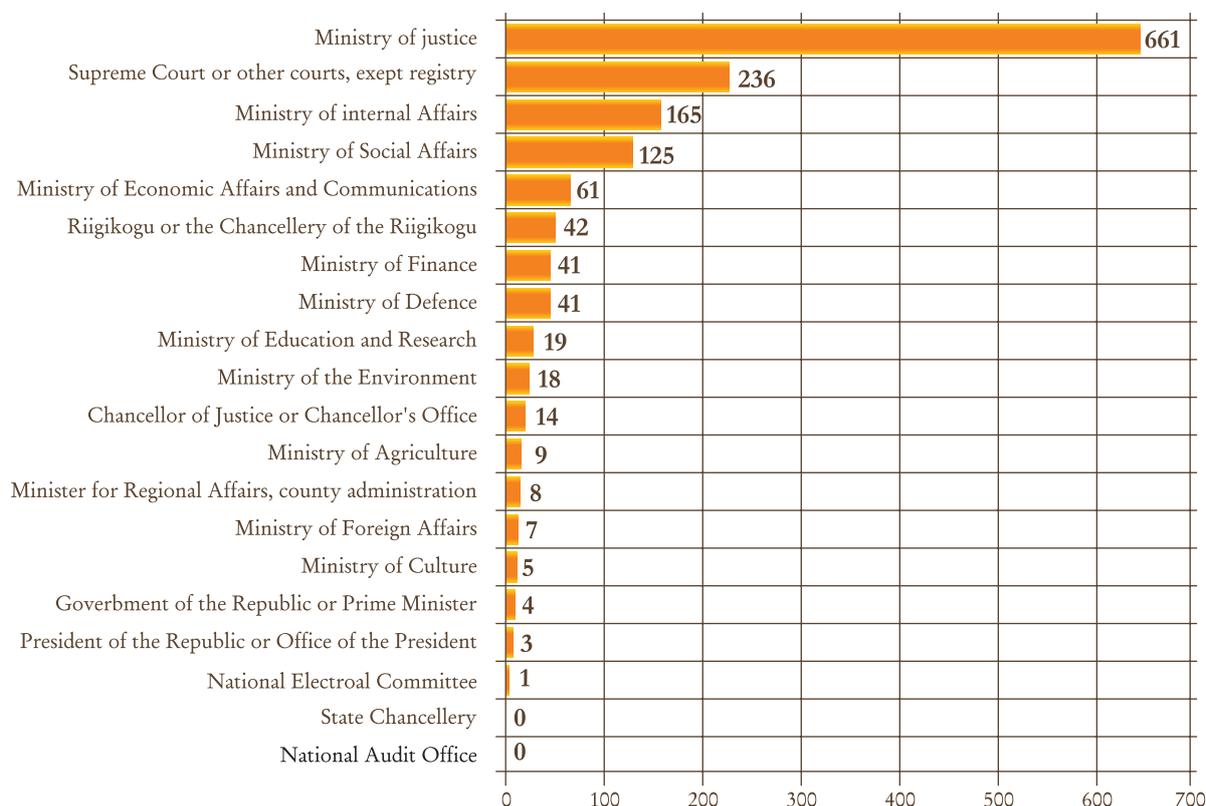


Figure 11. Distribution of cases by respondents on state level

Similarly to the previous years, the largest number of proceedings fell within the area of government of the Ministry of Justice, remaining more or less on the same level in comparison to 2009. The majority of proceedings within the area of government of the Ministry of Justice were still related to criminal enforcement law and imprisonment law (see Table 5) and were initiated on the basis of petitions by prisoners. In 85% of the proceedings within the area of government of the Ministry of Justice, no substantive proceedings were initiated, in 2009 this indicator was 84%.

If in 2009 there was a double increase in the number of proceedings within the area of government of the Ministry of Defence as compared to the previous period, in 2010 the number dropped again significantly. In comparison to 2009, the biggest increase was in the number of proceedings relating to the areas of government of the Ministry of Economic Affairs and Communications (33%) and the Ministry of Social Affairs (25%).

*Table 3. Distribution of cases by respondents on local government level*

Respondent on local government level	Cases opened	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
Harju County local authorities, except Tallinn	49	21	1	2	28
Tallinn	88	26	2	4	62
Hiiu County local authorities	3	0	0	0	3
Ida-Viru County local authorities, except Narva	21	6	0	0	15
Narva	20	7	0	2	13
Jõgeva County local authorities	10	4	1	1	6
Järva County local authorities	2	1	0	0	1
Lääne County local authorities	5	0	0	0	5
Lääne-Viru County local authorities	7	1	0	0	6
Põlva County local authorities	1	0	0	0	1
Pärnu County local authorities	15	6	0	0	9
Rapla County local authorities	9	4	0	1	5
Saare County local authorities	4	0	0	0	4
Tartu County local authorities, except Tartu	12	2	0	0	10
Tartu	22	4	0	1	18
Valga County local authorities	10	2	0	2	8
Viljandi County local authorities	3	1	0	0	2
Võru County local authorities	10	2	0	1	8
Association of local authorities or a joint agency	1	0	0	0	1

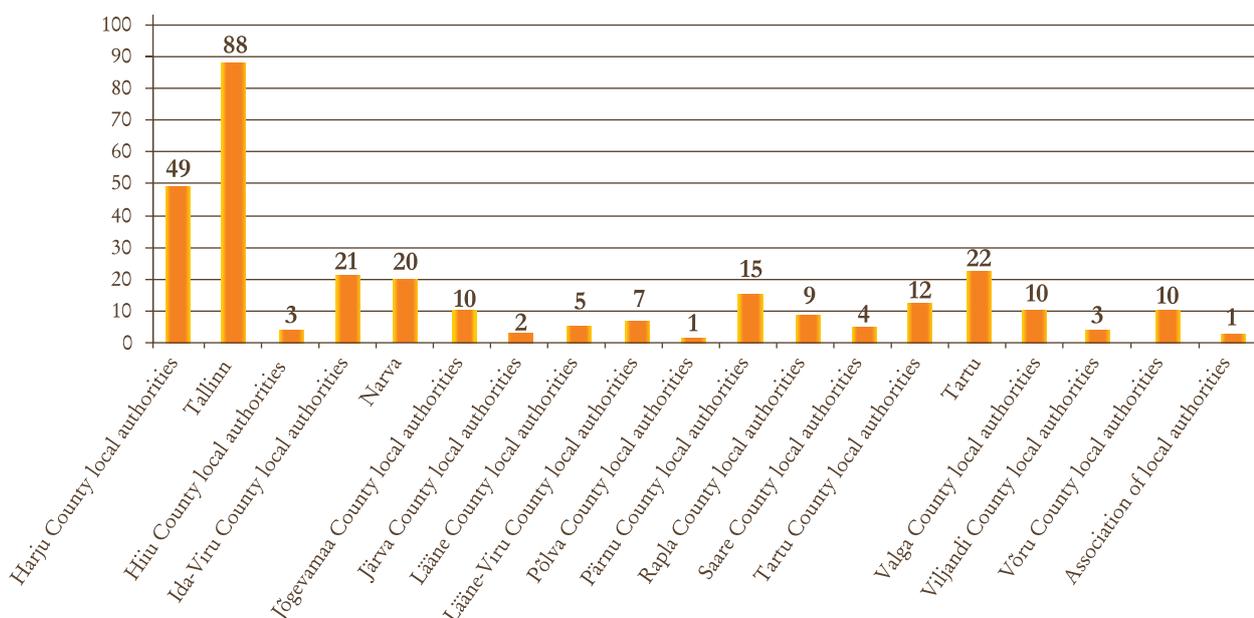


Figure 12. Distribution of cases by respondents on local government level

Table 4 provides an overview of outcomes in review proceedings and ombudsman proceedings conducted by the Chancellor on local government level with regard to particular local authorities<sup>39</sup>.

In 2010, the Chancellor made three proposals to local authorities to bring a regulation into conformity with the Constitution and Acts, and sent seven memorandums asking to adopt a legal act. In two cases the local authority resolved the conflict during the proceedings.

Upon scrutinising lawfulness of local government activities, the Chancellor made one proposal to a local authority for eliminating the violation, and made 19 recommendations for compliance with the principles of lawfulness and good administration. In six cases the local authority resolved the problem during the proceedings.

Table 4. Outcome of review proceedings and ombudsman proceedings on local government level

Review proceedings		
Proposal to bring a legal act into conformity with the Constitution and Acts		
1	Kiili Rural Municipality Council	Conflict of Kiili Rural Municipality Council regulation No 21 of 22 June 2004 “The procedure for the collection of fees for joining the public water supply and sewerage system” and regulation No 22 of 22 June 2004 “The bases for the calculation of the fee for joining the public water supply and sewerage system” with the Constitution
2	Tallinn City Council	Conflict of Tallinn City Council regulation No 13 of 10 February 2005 “The procedure for the payment of social benefits not dependent on the family income “ with the Constitution
3	Tallinn City Administration	Conflict of Tallinn City Administration regulation No 75 of 30 September 2009 “The prices of services for the water supply and sewage disposal within the principal area of activity of Tallinn public water supply and sewage system” with the Constitution

39 Table 4 “Outcome of review proceedings and of ombudsman proceedings on local government level” contains all the opinions of the Chancellor of Justice submitted to local authorities in 2010, including opinions provided within the proceedings initiated in the previous years.

**Memorandum to executive authority for adopting a legal act**

1	Narva-Jõesuu Town Administration	Concerning adoption of missing implementing acts required under the Public Water Supply and Sewerage Act and unconstitutionality of the adopted implementing acts
2	Tallinn City Council	Conflict of Tallinn City Council regulation No 42 of 17 December 2009 "The procedure for the payment of the use of public transport in Tallinn and the prices of tickets", § 2, § 4 and § 6, with the Constitution
3	Tallinn City Council	Conflict of Tallinn City Council regulation No 8 of 28 January 2010 "Compensation of the rise of the land tax to pension recipients in 2010" with the Constitution
4	Tallinn City Council	Conflict of Tallinn City Council regulation No 11 of 10 February 2005 "The procedure for applying for relief from the land tax and for the processing of the applications" with the Constitution
5	Tallinn City Council	Conflict of Tallinn City Council regulation No 16 of 3 March 2005 "The procedure for issuing the taxi licence and vehicle licence card, and establishing the rules for the provision of taxi services" with the Constitution
6	Tartu City Council	Conflict of Tartu City Council regulation No 120 of 19 September 2002 "Establishing a duty for compliance with property maintenance rules" with the Constitution
7	Torma Rural Municipality Council	Conflict of Torma Rural Municipality Council regulation No 50 of 23 September 2005 "Approval of the maximum price for heating energy in Torma rural municipality" with the Constitution

**Resolved by the institution during the proceedings**

1	Saku Rural Municipality Council	Conflict of Saku Rural Municipality Council regulation No 2 of 8 February 2007 "The procedure and conditions for the granting and payment of childcare allowance, and the provision of childcare services", § 3, with the Constitution
2	Rõngu Rural Municipality Council	Conflict of Rõngu Rural Municipality Council regulation No 20 of 25 August 2005 "Rõngu rural municipality building regulation", § 29, with the Constitution

**Ombudsman proceedings****Proposal to eliminate a violation**

1	Narva City Administration	Activities of Narva City Administration in assessing the need for the housing service and making available a dwelling for individuals
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**Recommendation to comply with lawfulness and the principle of good administration**

1	Haapsalu Town Administration	Activities of Haapsalu Town Administration in providing the social service at the homeless shelter
2	Kuusalu Rural Municipality Administration	Activities of Kuusalu Rural Municipality Administration in replying to an enquiry by an individual
3	Käru Rural Municipality Administration	Activities of Käru Rural Municipality Administration in ensuring access to public documents and conducting administrative proceedings
4	Narva City Administration	Activities of Narva City Administration in conducting proceedings for the application of involuntary treatment
5	Narva City Administration	Activities of Narva City Administration in ensuring access to public documents, complying with the requirements of data protection and providing the housing service

6	Otepää Rural Municipality Administration	Activities of Otepää Rural Municipality Administration in the processing of a detailed plan
7	Otepää Rural Municipality Administration	Activities of Otepää Rural Municipality Administration in replying to enquiries by individuals
8	Tallinn City Administration	Activities of Tallinn City Administration in registering a public assembly
9	Tallinn City Administration	Activities of Tallinn City Administration in establishing a fee for enrolment of children in a long day group
10	Tallinn City Administration	Activities of Tallinn City Administration in delegating the duty of provision of overnight accommodation service to a person in private law
11	Tallinn City Administration	Activities of Tallinn City Administration in providing the social service at the homeless shelter
12	Tallinn City Administration	Activities of Tallinn City Administration in replying to an enquiry by an individual
13	Lasnamäe City District Administration	Activities of Lasnamäe City District Administration in replying to an enquiry by an individual and complying with the formal requirements of an administrative act
14	North-Tallinn City District Administration	Activities of North-Tallinn City District Administration in replying to enquiries by individuals
15	Tartu City Administration	Activities of Tartu City Administration in separating a child from parents
16	Viimsi Rural Municipality Administration	Activities of Viimsi Rural Municipality Administration in replying to enquiries by individuals
17	Võhma Town Administration	Activities of Võhma Town Administration in organising open air events
18	Võru Town Administration	Activities of Võru Town Administration in replying to an enquiry by an individual
19	Võru Rural Municipality Administration	Activities of Võru Rural Municipality Administration in performing construction supervision

#### Resolved by the institution during the proceedings

1	Jõelähtme Rural Municipality Administration	Activities of Jõelähtme Rural Municipality Administration in notifying a person about the progress of privatisation proceedings
2	Rae Rural Municipality Administration	Activities of Rae Rural Municipality Administration in guaranteeing a kindergarten place
3	Rakvere Town Administration	Activities of Rakvere Town Administration in issuing an entry permit
4	Tallinn City Administration	Activities of Tallinn City Administration in processing the decisions on imposition of fines for delay
5	North-Tallinn City District Administration	Activities of North-Tallinn City District Administration in protecting the rights of children without parental care
6	Tartu City Administration	Activities of Tartu City Administration in ensuring decent living conditions in social housing

#### 4. Distribution of cases by areas of law

Similarly to previous years, in 2010 the largest number of cases was opened in connection with criminal enforcement procedure and imprisonment law. In comparison to other areas of law, there were still significantly more cases in relation to issues of social welfare law (an increase of 17% in comparison to 2009) and criminal and misdemeanour court procedure.

In comparison to 2009, the number of proceedings has almost doubled in relation to issues of energy, public water supply and sewerage. The number of proceedings in relation to pre-trial criminal procedure and social insurance has increased by one third.

While in 2009 the number of cases concerning police and law enforcement law had increased by half in comparison to the previous years, in 2010 the number dropped again by one third.

The biggest decline was in the number of cases concerning economic and trade management, competition law, company law, bankruptcy and credit institution law and environment law.

*Table 5. Cases opened by areas of law*

Area of law	Number of cases
Criminal enforcement procedure and imprisonment law	474
Social welfare law	124
Criminal and misdemeanour court procedure	100
Pre-trial criminal procedure	78
Enforcement procedure	72
Law of obligations	71
Administrative law (administrative management, administrative procedure, administrative enforcement, public property law, etc)	60
Social insurance law	60
Civil procedural law	57
Energy, public water supply and sewerage law	55
Health law	54
Education and research law	48
Financial law (incl. tax and customs law, state budget, state property)	47
Protection of personal data, databases and public information, state secrets law	46
Other public law	46
Local government organisation law	40
Non-profit associations and foundations law	39
Labour law (including collective labour law)	39
Family law	37
Environmental law	32
Traffic regulation law	28
Ownership reform law	28

Area of law	Number of cases
Citizenship and migration law	27
Building and planning law	26
Government organisation law	25
Public service	23
Police and law enforcement law	23
State legal aid	21
Transport and road law	21
Administrative court procedure law	20
Company, bankruptcy, and credit institutions law	20
Ownership law, including intellectual property law	19
Misdemeanour procedure	18
National defence law	17
Electoral and referendum law, political parties law	14
Consumer protection law	10
Other private law	9
International law	9
Telecommunications, broadcasting, and postal services law	7
Agricultural law (including food and veterinary law)	6
Succession law	6
Economic and trade management and competition law	5
Animal protection, hunting, and fishing law	4
Language law	3
Substantive penal law	3
Heritage law	3
Notarial law	3

## 5. Distribution of cases by regions

Similarly to the previous years, the largest number of petitions and cases opened on the basis of them was from the largest cities, including Tallinn (533 cases) and Tartu (336 cases). The number of proceedings initiated on the basis of petitions from Tallinn dropped by 90 in comparison to 2009, while the number of petitions from Tartu remained more or less the same, increasing by 14. Among the counties, the largest number of proceedings were still in relation to Ida-Viru County and Harju County. 274 proceedings were initiated on the basis of petitions from Ida-Viru County, followed by 203 proceedings on the basis of petitions from Harju County. As before, the smallest number of proceedings was in relation to Hiiu County (7 cases). 27 proceedings were initiated on the basis of petitions received from abroad, which is half more than in 2009. With regard to most regions, the number of cases opened was almost in the same proportion as in 2009.

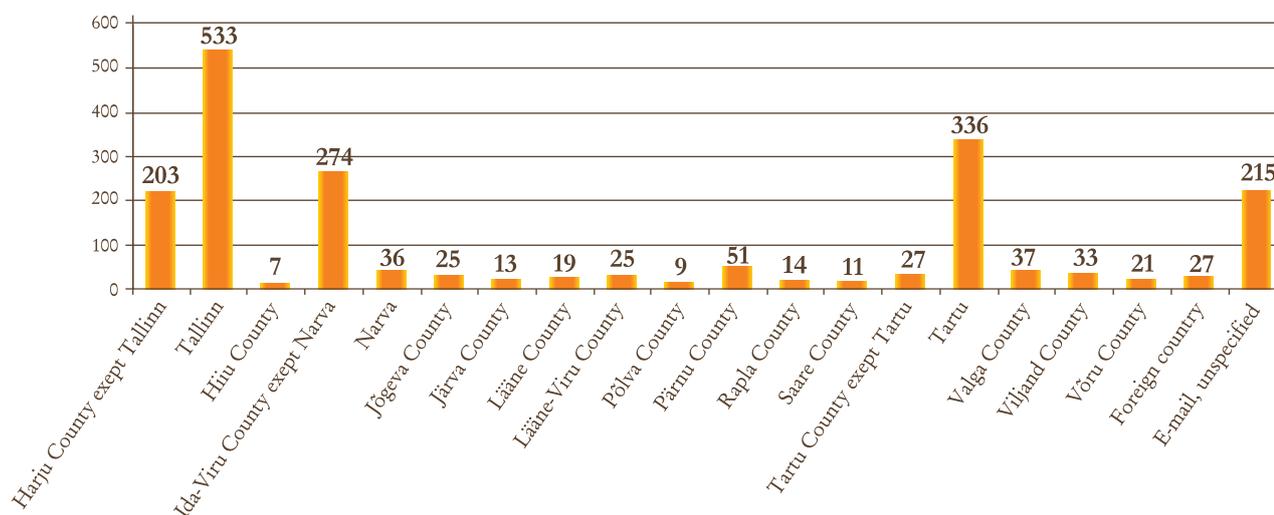


Figure 13. Distribution of cases by location of petitioner

## 6. Language of proceedings

Most petitions are still in Estonian. 1565 cases, i.e. 78.1% of the total number of cases, were opened based on petitions in Estonian. 333 cases, i.e. 16.6% of the total number of cases, were opened based on petitions in Russian, which is slightly less than in 2009. The number of petitions in other languages was still very small, making up only 0.2% of the total number of cases opened.

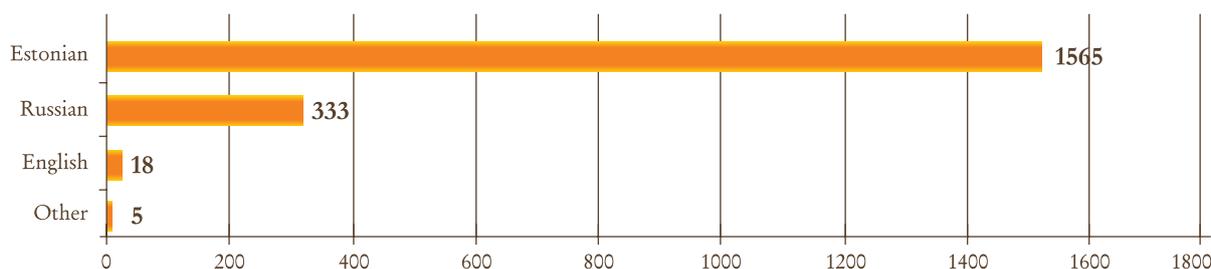


Figure 14. Distribution of cases by language of petition

## 7. Inspection visits

The Chancellor of Justice is authorised to conduct inspection visits to institutions subject to his supervision. On this basis, the Chancellor may, for example, carry out inspection visits to prisons, military units, police detention centres, expulsion centres, reception or registration centres for asylum seekers, psychiatric hospitals, special care homes, schools for pupils with special educational needs, general care homes, children's homes and youth homes.

Inspection visits are divided into regular and extraordinary visits. Regular inspection visits are scheduled in the annual action plan of the Office of the Chancellor of Justice, and supervised institutions are notified about them in advance. Extraordinary inspection visits are not reflected in the annual plan. Supervised institutions are not notified about them in advance, or they are notified immediately prior to inspection.

As of 18 February 2007, the Chancellor of Justice also functions as the national preventive mechanism established under Art 3 of the Optional Protocol to the UN Convention for the Elimination of Torture and other Cruel or Degrading Treatment or Punishment (OPCAT), so that targets of inspection visits include, in addition to national custodial institutions, all other institutions where freedom of individuals may be restricted.

Inspection visits are divided into three categories, depending on the agency or institution inspected:

- inspection of closed institutions – institutions where individuals are staying involuntarily and where their freedom may be restricted (OPCAT institutions);

- inspection of open institutions – institutions where individuals are staying voluntarily (schools, children’s homes);
- inspection of administrative authorities – national or local government agencies, in respect of which compliance with good administrative practice is verified.

During the reporting year, the Chancellor made 42 inspection visits, of which 27 were to closed institutions, 6 to open institutions, and 9 to administrative authorities. There were 13 extraordinary inspection visits, all of them to scrutinise closed institutions. The number of inspection visits to supervise OPCAT institutions increased slightly in comparison to 2009, while the number of visits to open institutions dropped significantly.

Table 6. Inspection visits conducted by the Chancellor of Justice

	2007	2008	2009	2010
inspection visits to closed institutions (OPCAT)	18	19	25	27
inspection visits to open institutions	5	10	17	6
inspection visits to administrative authorities	5	4	7	9
total inspection visits	28	33	49	42
of which, extraordinary inspection visits	6	8	4	13

## 8. Reception of individuals

In 2010, 177 individuals came to a reception in the Office of the Chancellor of Justice, which is about ten people fewer than in 2009.

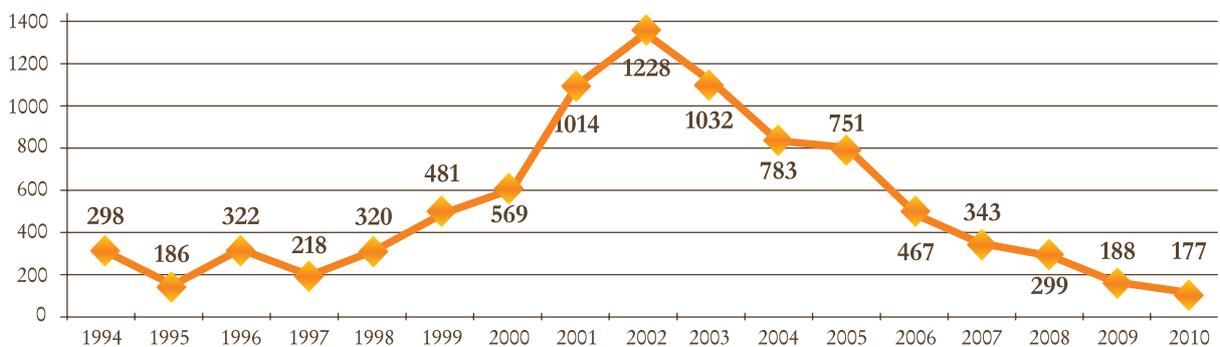


Figure 15. Number of persons coming to reception with the Chancellor in 1994–2010

As year by year the number of people registering for a reception with the Chancellor of Justice has declined, there is no need for organising receptions in regions, and the problems of individuals are increasingly frequently resolved by telephone. In 2010, the largest number of people coming to a reception were from Tallinn and Harju County (144 and 15 persons respectively).

In addition to regular reception of individuals the Chancellor also arranged a reception in Narva City Administration during an inspection visit to Ida-Viru County. Nine individuals came to that reception.

Questions raised during the receptions most frequently concerned issues relating to pre-trial criminal procedure (17 persons), followed by issues of health law, civil procedural law and law of obligations (15 persons in all cases), other issues of public law (11 persons), enforcement procedure (9 persons), non-profit associations and foundations law (7 persons) and issues relating to state legal aid social welfare law (6 persons in both cases).

In comparison to 2009, the number of persons coming to the Chancellor's reception with issues concerning health law more than doubled.

Mostly, people coming to receptions needed clarification concerning legislation, and legal advice.

## 9. Conclusion

For the first time in the period of four last years the number of petitions received by the Chancellor of Justice decreased. During the reporting year, the Chancellor received 2430 petitions, which is 11% less than in the previous year. In 2010, the Chancellor opened 2003 cases, which is more or less the same as in the previous year. There was an increase in the number of cases where the Chancellor initiated substantive proceedings. However, the ratio of review proceedings and ombudsman proceedings changed. If previously the number of review proceedings was half smaller than the number of ombudsman proceedings, in 2010 the proportions became balanced. The proportion of special proceedings with regard to substantive proceedings remained on the same level. The number of own-initiative proceedings, including the number of inspection visits, decreased slightly.

During review proceedings, in 37 cases (i.e. 22% of the total number of review proceedings) the Chancellor found a conflict with the Constitution or an Act, of which in ten cases the situation was resolved by the institution in the course of the proceedings. As a result of ombudsman proceedings, the Chancellor found a violation of the principle of good administration and lawfulness in 92 cases (i.e. 30.4% of the total number of ombudsman proceedings), of which 27 were resolved by the institution in the course of the proceedings. In comparison to 2009, the number of proceedings where a conflict or a violation was found decreased slightly both with regard to review proceedings and ombudsman proceedings. In case of review proceedings, the number of cases resolved by the respondent institution during the proceedings declined as compared to the previous year, while in case of ombudsman proceedings their number increased significantly.

Most cases were still opened based on petitions by prisoners to resolve issues relating to criminal enforcement procedure and imprisonment law falling within the area of government of the Ministry of Justice. In the majority of these cases (85%), no substantive proceedings were initiated. Criminal enforcement procedure and imprisonment law were also the areas of law in connection with which the largest number of cases were opened in 2010, amounting to 24% of the total number of cases. In comparison to 2009, the number of proceedings increased by almost a half with regard to issues of energy, public water supply and sewerage law. The number of proceedings relating to pre-trial criminal procedure and social insurance increased by one third.

By regional distribution, the largest number of cases were again based on petitions received from Tallinn and Tartu. Among counties, Ida-Viru County still holds the first place, with one third of its proceedings being related the activities of Viru Prison.

There was again a slight increase in the proportion of cases opened based on petitions in Estonian, making up 78.1% of the total number of cases. The number of proceedings initiated based on petitions in Russian dropped accordingly, making up 16.6% of the total number of cases.

The number of inspection visits in 2010 was slightly smaller than in 2009. During the reporting year, 42 inspection visits were carried out, of them 27 to supervise OPCAT institutions, 6 to open institutions, and 9 to administrative authorities.

In 2010, 177 individuals came to a reception in the Office of the Chancellor of Justice. Questions raised during the receptions most frequently concerned issues relating to pre-trial criminal procedure, health law, civil procedural law and law of obligations.